S. HRG. 99-598

S. 2147, A BILL TO REAUTHORIZE THE ELIGIBILITY OF SHELTERED WORKSHOPS TO COMPETE ON FEDERAL PROCUREMENT CONTRACTS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2147

A BILL TO REAUTHORIZE THE ELIGIBILITY OF SHELTERED WORKSHOPS TO COMPETE ON FEDERAL PROCUREMENT CONTRACTS

MARCH 26, 1986

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE

59-836 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
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S721-7

59-836 O - 86 - 1

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S. 2147, A BILL TO REAUTHORIZE THE ELIGIBILITY OF SHELTERED WORKSHOPS TO COMPETE ON FEDERAL PROCUREMENT CONTRACTS

WEDNESDAY, MARCH 26, 1986

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room 428A, Russell Senate Office Building, Hon. Lowell Weicker, Jr. (chairman of the committee) presiding.

STATEMENT OF HON. LOWELL WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT, AND CHAIRMAN, COMMITTEE ON SMALL BUSINESS

Senator WEICKER. Today the committee is holding a hearing on S. 2147, a bill sponsored by myself, Senator Kerry, Senator D'Amato, and others to reinstate eligibility of sheltered workshops to compete on small business contracts.

I ask unanimous consent that the remainder of my statement be placed in the record.

[The prepared statement of Senator Weicker follows:]

OPENING STATEMENT OF SENATOR LOWELL WEICKER, JR.

HEARING ON S. 2147,
A BILL REAUTHORIZING ELIGIBILITY OF SHELTERED WORKSHOPS
TO COMPETE ON SMALL BUSINESS SET-ASIDE CONTRACTS

MARCH 26, 1986

TODAY, THE COMMITTEE IS HOLDING A HEARING ON S. 2147, A BILL SPONSORED BY MYSELF, SENATOR KERRY AND ELEVEN OTHERS TO REINSTATE ELIGIBILITY OF SHELTERED WORKSHOPS TO COMPETE ON SMALL BUSINESS CONTRACTS. SHELTERED WORKSHOPS ARE LICENSED AS NOT-FOR-PROFIT ORGANIZATIONS AND CONSEQUENTLY, UNDER THE TERMS OF THE SMALL BUSINESS ACT, THEY ARE INELIGIBLE TO SUBMIT BIDS ON CERTAIN FEDERAL CONTRACTS, CURRENTLY SET-ASIDE FOR SMALL BUSINESS.

UNTIL RECENTLY, THESE WORKSHOPS WHICH PUT THE BLIND AND THE HANDICAPPED TO WORK, WERE ALLOWED TO SUBMIT BIDS FOR FEDERAL CONTRACTS ALONG WITH FOR-PROFIT COMPANIES. WE IN THE SENATE AND OUR COLLEAGUES IN THE HOUSE PASSED LEGISLATION LAST CONGRESS WHICH WOULD HAVE REAUTHORIZED WORKSHOP ELIGIBILITY; BUT THE PROPOSAL DIED IN CONFERENCE FOR REASONS UNRELATED TO THE MERITS. THIS YEAR, I AM HOPEFUL THAT S. 2147 WILL ONCE AGAIN ALLOW WORKSHOPS THE OPPORTUNITY TO COMPETE WITH FOR-PROFIT COMPANIES ON THE SMALL BUSINESS SET-ASIDE PROGRAM.

AT A TIME WHEN SOME 60 PERCENT OF THE HANDICAPPED ARE NOT WORKING AND OVER 50 PERCENT FALL BELOW THE POVERTY LINE, IT IS CLEAR THAT WE IN THE CONGRESS HAVE NOT DONE ENOUGH TO HELP THE MOST DISADVANTAGED MEMBERS OF SOCIETY TO COMPETE ON AN EQUAL

BASIS. I STRONGLY BELIEVE THAT WE ALL BENEFIT FROM PROGRAMS WHICH PUT THE HANDICAPPED AND BLIND TO WORK AND WHICH MAKE TAXPAYERS OUT OF TAX USERS.

WHILE CLEARLY DESIGNED TO ASSIST THE WORKSHOPS IN THEIR LAUDABLE GOAL OF PUTTING THE HANDICAPPED TO WORK, S. 2147 IS ALSO ATTENTIVE TO THE CONCERNS OF THE SMALL BUSINESS COMMUNITY. THE LEGISLATION CUTS THE PREVIOUS ANNUAL CEILING IN HALF TO $50 MILLION AND IMPOSES A FIVE-YEAR SUNSET PROVISION IN ORDER TO STUDY THE SUCCESS OF THE PROGRAM AT THAT TIME. FURTHERMORE, OF THE $38 BILLION AWARDED UNDER THE SET-ASIDE PROGRAM, THE PROPOSED CEILING FIGURE REPRESENTS LESS THAN 1 PERCENT OF THE TOTAL SMALL BUSINESS PROCUREMENTS. WE ARE ORDERING IMPROVED RECORD-KEEPING AND WE ARE ALSO REQUIRING THAT AT LEAST 75 PERCENT OF THE WORK PRODUCED UNDER ANY SET-ASIDE CONTRACT MUST BE PERFORMED BY THE HANDICAPPED THEMSELVES.

WE WILL HEAR TODAY FROM BOTH PROPONENTS AND OPPONENTS OF THE BILL. WE HOPE THAT THEIR TESTIMONY WILL ASSIST US IN MAKING IMPROVEMENTS TO S. 2147 WHERE NECESSARY.

Senator WEICKER. Senator D'Amato has another commitment, and I would now recognize him for purposes of an opening statement.

Senator D'AMATO. Thank you, Mr. Chairman.

Let me first commend you for S. 2147. I am pleased to be a cosponsor of the legislative initiative to open up the sheltered workshops so that they can undertake some of the Federal Government bids. I believe that they have been successful in the past and they can be more successful in the future.

Mr. Chairman, let me commend you for the initiative. Let me say to you that I am fully prepared to support you both here in committee and on the Senate floor. I hope we get some speedy action.

I ask that the balance of my remarks be contained in the record as if read in their entirety.

[The prepared statement of Senator D'Amato follows:]

STATEMENT OF SENATOR ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Good morning, Mr. Chairman. Before we begin I would like to thank you for calling this important hearing. Your efforts on behalf of sheltered workshops for the blind and handicapped are indeed commendable. As you know, I am a cosponsor on Senate bill 2147, legislation to reestablish the eligibility of sheltered workshops for the blind and handicapped to compete for small business contracts with the Federal Government. I do, however, believe the bill deserves critical review.

Sheltered workshops are nonprofit organizations licensed by the Department of Labor which hire at least 75 percent of their workforce from the handicapped and blind. Work centers for the handicapped citizens of this country cannot compete with large companies. Work centers, if looked at realistically, are nothing more than small businesses.

Currently, sheltered workshops are allowed, under provisions of the Javits-Wagner-O'Day (JWOD) Act, to request that certain services or commodities be set aside permanently and placed on a "procurement" list. If the list is approved, the Government must purchase these goods exclusively from sheltered workshops.

These workshops, however, are currently excluded from bidding on Federal Government projects that are not set aside because they are nonprofit organizations. S. 2147 would restore the eligibility which existed from 1981-1983, during which time workshops successfully bid on $6.7 million of contracts out of a total of $38 billion awarded under the Small Business Act.

The JWOD Act provides approximately $250 million a year in business to workshops. Workshops, however, complain that the application process is too long and too complicated, and that they need a speedier, more efficient process in order to compete in the "spot" market for Government contracts. A recent example of how the process is not working occurred when a sheltered workshop was disqualified from a contract with Hill Air Force Base in the State of Utah, even though its bid of $26,650 was almost $5,000 lower than the next lowest bidder. As a result of the loss of contracts like this, disabled workers, who, up to now, have been making quality goods at competitive prices, are gradually being laid off.

I believe Senate bill 2147 deserves careful consideration. Legislation may be necessary to allow these nonprofit employers of the blind and handicapped to operate as normal small businesses.

Mr. Chairman, I am interested in hearing the testimony of today's witnesses. I am certain they will highlight a situation which is in need of thorough investigation.

Thank you, Mr. Chairman.

Senator WEICKER. It will be so ordered.

I want to thank Senator D'Amato for his efforts unstintingly on behalf of the handicapped, both in terms of authorization—in subject matter—and in terms of appropriations. The Senator has been a very strong ally in the fight for those that deserve our special care in this Nation.

Now we have as our first witness my good friend Frank Swain, Chief Counsel, Office of Advocacy, Small Business Administration, and then we have three panels following that. I would ask, since we do have 10 witnesses, I would ask please that all witnesses keep their remarks to about 5 minutes. Statements in their entirety will be included in the record, and then that will permit time for any questions to be asked.

Frank, good to see you. Why don't you go ahead?

STATEMENT OF FRANK S. SWAIN, CHIEF COUNSEL, OFFICE OF ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. SWAIN. Thank you very much, Mr. Chairman.

I would like to commend both you and Senator D'Amato for your interest both in handicapped and disabled issues as well as your interest in small business. The bill before the committee this morning requires some balancing, maybe some delicate balancing, and I am certainly confident that the committee will be able to work through all of the key issues.

As you indicate, we have a lengthier statement which I will summarize the key points on and ask that the remainder be put in the record.

I should note a couple of things to start. First of all, this is a statement of our Office of Advocacy. It is not necessarily the formal position of the Administration at this point. I am not aware that the Administration is opposed to what I am saying, but I don't think that the issue has been fully vetted around the other agencies that may have an interest in it. It generally speaks to the general position of the agency as a whole, though.

Second, our offices received some notoriety, perhaps in the past, on issues that we have been raising relating to nonprofit competition with small business. That is an issue that has come very much to the fore in the current series of State White House conferences. That relates basically to commercial activities of large nonprofits that are primarily research and education oriented. I want to make it clear to the committee and for the record that the issue that we are considering here this morning is a very narrow issue relating specifically to set-asides. The work that we have done on nonprofits has not been engendered by any complaints particularly about sheltered workshops going too far in their various activities.

We support in principle the extension of section 15(c) of the Small Business Act. We support making available to sheltered workshops participation in the set-aside program. The level of the program, as you say in your opening remarks, is really quite modest, given Federal procurement as a whole. However, we do think that—and as we point out in our statement—there are certain areas where their procurement is concentrated, and in those areas we feel that there may be some greater limitations necessary than your bill currently has, to avoid any disproportionate or overly dramatic impact on small firms that are already in those particular industries.

Your bill includes two limited caps, a total dollar cap of $50 million and another direct labor cap on workshops in the set-aside. We think that there are additional areas. There are at least three addi-

tional areas, that we would urge the committee to strongly consider in putting together the final bill.

First of all, I think there has been some concern expressed—we have heard the concern for several years—if one opens up the set-aside program to sheltered workshops or other qualifying nonprofits, there is a concern that those entities be held to some sort of size standard, as of course the small businesses are that are currently in the set-aside program. The size standard for most manufacturing industries is 500 employees. We would encourage the committee to include some size standard language in there.

If it is necessary that adjustments be made to take into account the issues of differing productivity of the employees in a workshop, then we think that that can be worked through, but the old legislation, which has since expired, had no reference at all to size standards. There have been some complaints on that. We think the committee should address that.

Second, and perhaps most significantly, I think there is a real problem with the interplay between the Javits-Wagner-O'Day procurement procedures and the small business set-aside procurement procedures. The Javits-Wagner-O'Day procurement procedures encompass a large volume of procurement. It has grown quite handily over the last several years and it has probably been a very successful program from that perspective.

The problem that we fear is that a nonprofit who competes in a set-aside and receives that contract may then be able to go and, the next year, apply to the Javits-Wagner-O'Day Committee for the Purchase from the Blind and Other Severly Handicapped and receive a permanent set-aside of that contract under the Javits-Wagner-O'Day Act because they have already received it the previous year under the Small Business Act. They are the incumbent contractor and it wouldn't be necessary for the committee to look at the small business impact.

In other words, it is the issue of, if you get a contract under a small business set-aside, then it seems that you could quite easily the next year take it and have it indefinitely set aside for only purchase from sheltered workshops under the Javits-Wagner-O'Day procedures. We think that there might be a real element of unfairness in that, and we strongly urge the committee to impose some sort of nontransferability restriction.

Finally, there are certain product areas in which there is a tremendous amount of purchase by sheltered workshops and a fairly minimal amount of sales by for-profit small businesses. We would advise great caution, particularly in those product areas, and we would suggest that the committee impose a couple of overall ceilings in addition to the $50 million ceiling, a couple of approaches.

One approach could be a per-contract limitation. We suggest in our statement $75,000. There is nothing magical about that number. It could be higher, it could be lower, but it would serve to limit the dollar amount of contracts, particularly large contracts where there might be particularly immediate dramatic impact.

Second, we would encourage the committee to impose an overall limit that no more than 5 percent of the small business set-asides in a single procuring activity would be allowed to go to nonprofit workshops. We feel that that would basically retain the general

distribution that is currently the case, while allowing some measured growth and participation by nonprofit sheltered workshops that would otherwise qualify under the set-asides.

To sum up, Mr. Chairman, we think that we have no overall objections to the extension of 15(c). We do think that some limitations greater than are included in S. 2147 are necessary, and we spell them out in our statement.

[The prepared statement of Mr. Swain follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

STATEMENT OF

FRANK S. SWAIN

CHIEF COUNSEL FOR ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

MARCH 26, 1986

Mr. Chairman:

Thank you for providing me with this opportunity to testify on S.2147, which would reauthorize Section 15(c) of the Small Business Act to permit nonprofit workshops for the blind and handicapped to compete for small business set-aside procurements. These are my views as Chief Counsel for Advocacy, and not necessarily those of the Administration. The small business community has always supported efforts to increase employment opportunities for the blind and handicapped. Although we support some participation by sheltered workshops in the small business set-aside program, several limitations to the proposed bill are necessary to ensure that certain small business sectors will not suffer an unduly harsh impact.

I should point out at the outset, Mr. Chairman, that my efforts to draw attention to the need for narrowing the tax exemption for commercial activities of nonprofit organizations are unrelated to this bill. Responding to concerns from many sectors of the small business community, I have studied that issue, issued a report,[1] and spoken out publicly. Sheltered workshops are not among the nonprofits that were the

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[1]U.S. Small Business Administration, Office of Advocacy, Unfair Competition by Nonprofit Organizations With Small Business: An Issue for the 1980s, (June 1984).

source of unfair competition documented in our report. Nonetheless, the entry of tax exempt sheltered workshops into the small business set-aside program does raise several small business concerns.

Over the years, Congress has authorized a number of programs aimed at assisting the blind and severely handicapped to become fully productive members of society. For example, Section 110 of the Rehabilitation Act of 1973 provides Federal funds to the states to operate vocational rehabilitation programs to prepare handicapped persons for employment. Similarly, the Supplemental Security Income-Vocational Rehabilitation Program and the Beneficiary Rehabilitation Program established under the Social Security Act were aimed at enabling these individuals to become gainfully employed.

One very successful program providing such employment opportunities was established under the Javits-Wagner-O'Day Act. 41 U.S.C. §§46-48. Under that program, the Committee for Purchase from the Blind and Other Severely Handicapped (the "Committee") is authorized to require particular goods and services used by Federal agencies to be procured exclusively from eligible sheltered workshops. The value of directed procurements under the Javits-Wagner-O'Day Act has increased steadily in recent years -- from $92.4 million in Fiscal Year 1979 to over $268 million in Fiscal Year 1985 -- and is

continuing to grow. The attached graph compares the growth rate of the Javits-Wagner-O'Day program with those of overall procurement and small business procurement.

Although the value of sheltered workshop purchases, and those which would be permitted under a reauthorized Section 15(c), seems small when compared to the total value of Federal contracts awarded to small business they are most likely to fall in only a few areas of procurement. Some segments of the small business community are concerned that S.2147 in its present form could lead to overconcentration of sheltered workshops in certain industries. This concentration could circumvent some of the protections presently afforded small business by the Javits-Wagner-O'Day Act and the Small Business Act.

Available data on the sheltered workshop share of Federal contract dollars show that procurements under the Javits-Wagner-O'Day Act are concentrated in a relatively small number of industries. This is because sheltered workshops are not represented in the construction and high-technology industries, and have only limited involvement in the manufacturing and service sectors. Information from the Federal Procurement Data System (FPDS) confirms this concentration of sheltered workshop activity. In Fiscal Year

1984, approximately 68 percent of product purchases under the Javits-Wagner-O'Day Act were concentrated in only 15 four-digit product codes. For example, in Product Code 7520 "Office Accessories," out of a total of $31,225,000 in FPDS reported contracts, sheltered workshops accounted for 51 percent of Federal sales ($16,072,000). By contrast, the total small business share was only 16 percent ($4,921,000), and contracts awarded under small business set-asides accounted for only 4 percent ($1,185,000) of the reported total. The attached chart presents similar comparisons for the 15 product codes in which sales under the Javits-Wagner-O'Day program accounted for more than 10 percent of total reported sales.

CONTRACT LIMITATIONS SHOULD BE SET TO PREVENT DISPROPORTIONATE ADVERSE ECONOMIC IMPACT TO FOR-PROFIT SMALL BUSINESSES

Under the proposed Section 15(c) reauthorization,[2] sheltered workshops would be permitted to compete directly against for-profit small businesses on set-aside procurements -- in addition to their present Javits-Wagner-O'Day exclusive procurements -- without regard for their potential overconcentration in certain sectors. Sole reliance on the proposed $50 million per year cap on Section 15(c) awards

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[2]This program was in effect during Fiscal Years 1981-1983. P.L. 96-302, 94 Stat. 833. It was not reauthorized during the 98th Congress.

would neither limit this potential overconcentration, nor be practical since the data system does not allow the timely collection of government-wide procurement information necessary to determine when the ceiling has been reached. Some small businesses fear that this would ultimately permit sheltered workshops to seriously reduce the present small business share of set-aside contracts for some commodities, particularly if sheltered workshops were to concentrate their bidding on goods similar to those which they already produce.

Accordingly, we suggest that reauthorization of Section 15(c) include a provision limiting individual contract awards to sheltered workshops to a maximum of $75,000 per contract, or to a similar figure which would place an appropriate limitation on the size of individual contract awards. In addition, the total amount of awards which a contracting activity, as defined in the Federal Acquisition Regulation, may make under this section should be limited to 5 percent of its anticipated total small business set-aside awards in the Fiscal Year during which award is made. These provisions would be enforceable and would limit the potential for anticompetitive overconcentration of sheltered workshops in particular commodities, and at the same time permit them to compete for a share of overall small business set-aside dollars.

CONTRACTS AWARDED UNDER A 15(c) SET-ASIDE PROVISION SHOULD NOT BE ELIGIBLE FOR THE JAVITS-WAGNER-O'DAY PROGRAM

We are also concerned that the present Section 15(c) reauthorization bill could undermine the small business protections presently found in the Javits-Wagner-O'Day program. When considering a request to place an item on its procurement list, the Committee for Purchase from the Blind and Severely Handicapped (the "Committee") is required to evaluate the ability of the sheltered workshop to perform the work, and seeks to determine whether the incumbent, for-profit contractor would experience a serious adverse impact. It does so by comparing the value of the affected business' present contract for the item with the estimated value of its annual sales.

If, however, a sheltered workshop develops its industrial capacity to produce the item by successfully bidding for a Section 15(c) small business set-aside contract, and later applies to the Committee to have that item added to the procurement list, the likelihood of approval would increase. The Committee would be unlikely to find any potential adverse impact since the incumbent contractor would be the sheltered workshop. Thus, in a worst case scenario, a sheltered workshop could ultimately place an item onto the procurement list by consciously underbidding on a small business set-aside and developing the expertise to produce the good or service at the expense of for-profit businesses. In order to prevent this

potential, and at the same time permit sheltered workshops an opportunity to compete fairly on small business set-asides, we suggest that a reauthorized Section 15(c) provide that any item presently being procured under that section may not also be considered for inclusion on the Javits-Wagner-O'Day procurement list.

SHELTERED WORKSHOPS SHOULD MEET SBA SIZE STANDARDS IF THEY ARE TO COMPETE IN SMALL BUSINESS SET-ASIDES

Our final concern is permitting nonprofit sheltered workshops to bid on small business set-aside procurements without also requiring them to otherwise qualify as small businesses, notwithstanding their nonprofit status. The inclusion of all sheltered workshops regardless of size, is unfair to those bona fide for-profit small businesses who are the intended beneficiaries of the size standards promulgated by the Small Business Administration. Generally, in the manufacturing industries the small business size standards define a small business as one having 500 or fewer employees, and in the service industries the small business size standards are linked to a firm's average annual gross receipts. These small business size standards are designed to ensure that procurements under the small business set-aside program are in fact limited to the small business sectors of the affected industries.

However, some small businesses, who would now be competing with sheltered workshops for small business set-aside procurements, have complained that treating sheltered workshops as "small business," regardless of their actual size, is fundamentally unfair. They point out that a number of sheltered workshops significantly exceed the levels set by the size standards, and that this may well give them economies of scale which would provide the larger workshops with a competitive advantage. The size benefit would be in addition to those they may already enjoy by virtue of being tax exempt, the beneficiaries of Labor Department certificates permitting payment of less than minimum wages, or the recipients of more direct public assistance. Although comprehensive statistics on the size distribution of sheltered workshops are not available, it is clear that some of the larger workshops employ in excess of 500 persons. In order to preserve the integrity of the small business set-aside program and the competitive protections embodied in the small business size standards, we suggest that sheltered workshops bidding under a reauthorized Section 15(c) be required to play by the same basic rules as do for-profit small businesses -- i.e. that they otherwise qualify as small businesses under the applicable size standards.

We feel that the present size standards are appropriate for this purpose. If appropriate, the Size Standards Office of the Small Business Administration can revise the regulations

governing the computation of "number of employees" and "annual receipts" to take into consideration some of the unique characteristics of nonprofit sheltered workshops.

TECHNICAL AMENDMENTS

Finally, we have three technical suggestions to clarify the language of the bill. First, Section (c)(3) should be clear that a determination of severe economic injury is not limited to situations where a for-profit concern may experience a 20 percent reduction in sales, since particular cases may involve other factors. Second, the determination authority should be vested in the Administrator, subject to consultation with the Executive Director, rather than being a joint determination. Third, Section 3 should designate a particular individual, such as the Administrator, to appoint the task force members.

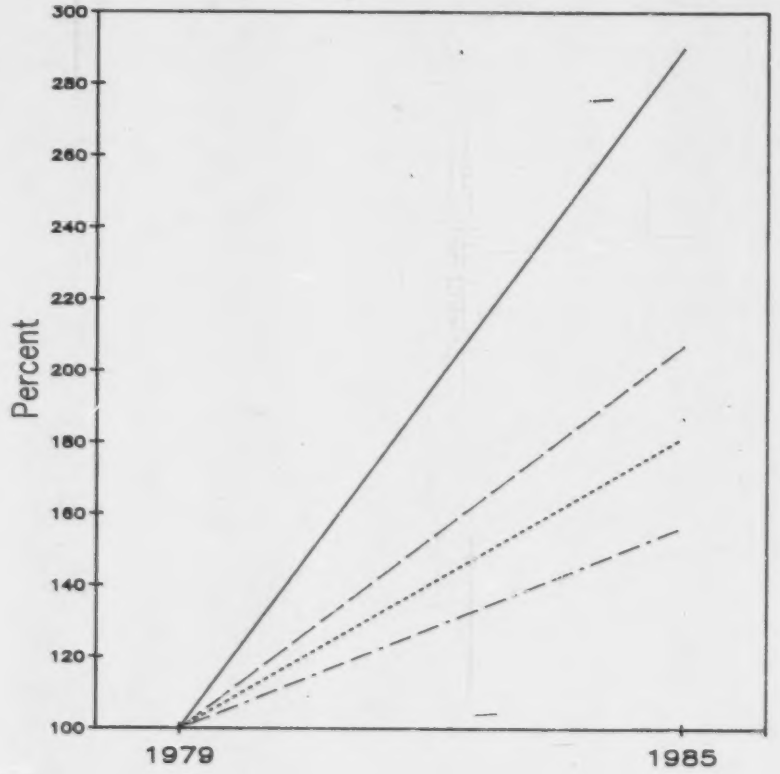
CONCLUSION

In sum, permitting sheltered workshops to compete for a share of small business contract dollars in order to improve the employment prospects for the nation's blind and severely handicapped workers is clearly worthwhile. In order to ensure that this program actually works as intended, and at the same time does not result in disproportionate adverse impacts on

those small businesses which are the intended beneficiaries of the small business set-aside program, a number of improvements to the present reauthorization bill are clearly called for. These are: (1) to place an appropriate per contract cap, and a limit of 5 percent of total small business set-asides by each contracting activity, on the value of awards to sheltered workshops under the Section 15(c) program; (2) to prohibit items being procured under the Section 15(c) program from being added to the Javits-Wagner-O'Day procurement list; and (3) to require that nonprofit sheltered workshops qualify as small business concerns under the established small business size standards.

I thank the Committee for inviting me to testify today, and I would be happy to answer any questions.

FY 1985 Procurement Activity as Percent of FY 1979 Activity



—— Javits–Wagner–O'Day(JWOD)

— — Total Procurement

..... Total Small Business

-.-.- Small Business Set–Asides

	FY 1985 Millions of Dollars	Average Annual Percentage Growth
JWOD	268	19.4
Total	182,604	12.9
Small Business	25,247	10.4
Set-Asides	7,949	7.9

PRODUCT CODES WITH SIGNIFICANT SHELTERED WORKSHOP INVOLVEMENT
Fiscal Year 1984 (in thousands)

Code	Total Contracts (100%)	Sheltered Workshops	Total Small Business	Small Business Set-Aside
7340 Cutlery & Flatware	$ 5,056	$ 2,946 58%	$ 1,495 30%	$ 403 8%
7210 Household Furnishings	30,033	16,029 53%	9,905 33%	2,825 9%
7520 Office Accessories	31,225	16,072 51%	4,921 16%	1,185 4%
7920 Brooms, Brushes, Mops & Sponges	32,288	11,565 36%	16,840 52%	13,069 40%
7360 Set Kit & Outfit Food Prep & Serve	7,654	2,458 32%	4,590 60%	4,511 59%
6840 Pest Control Agents & Disinfectants	15,191	3,573 24%	6,881 45%	4,120 27%
5440 Scaffolding Equip.	4,007	860 21%	2,256 56%	658 16%
6230 Electric Portable Lighting Equip.	20,118	3,140 16%	15,194 76%	11,747 58%
8440 Hosiery, Handwear & Clothing - Men	18,760	2,749 15%	15,904 85%	15,268 81%
6645 Electronic Time Measuring Equipment	9,093	1,248 14%	4,857 53%	1,204 13%
9905 Signs, Displays & Ident Plates	5,421	756 14%	3,454 64%	1,430 26%
7510 Office Supplies	50,720	6,689 13%	17,126 34%	5,558 11%
7530 Stationery & Forms	120,361	16,199 13%	47,431 39%	28,098 23%
8315 Notions & Apparel Findings	4,663	584 13%	3,247 70%	1,783 38%
7930 Cleaning/Polishing Compounds & Preps	33,556	3,209 10%	4,734 14%	1,828 5%
Totals	388,146	88,077 23%	158,835 41%	93,687 24%

Senator WEICKER. On an earlier occasion in June 1984 you wrote that you had no objection to the reauthorizing of workshop eligibility for the set-aside program, as long as it was not a permanent reauthorization. At that time you were well aware of the experience over a 3-year period from 1981 to 1983 when the program was in existence. What has occurred since 1984 to alter your viewpoint?

Mr. SWAIN. We have heard from some more people on it since June 1984. We have taken a closer look at the issues. We have had a lot of discussion with people in the small business community that are concerned about it, and people on your committee that are working through it. We think that we have a more refined position than we did in 1984. It is, basically, that we think the program makes sense. It ought to be reauthorized on a sunsetted basis. We suggest 3 years; your bill has 5 years. But, particularly on the nontransferability question we think that, working through the issue, that that is a real problem.

Senator WEICKER. As you know, S. 2147 simply permits sheltered workshops to compete with small business for Federal contracts. Do you believe that is unfair competition?

Mr. SWAIN. No, not at all. Not in and of itself.

Senator WEICKER. Do you expect sheltered workshops to win each time they bid on a contract?

Mr. SWAIN. Well, I have no expectation on that one way or the other, Senator, and unfortunately there isn't any record on that one way or the other. The point is, if they do win—whether it is every time or every 5th time or every 10th time—we have a concern that they may win, and the next year they can go under the Javits-Wagner-O'Day program and have it indefinitely set aside for only sheltered workshops. That is the problem.

Senator WEICKER. Staff indicates actually that experience indicates that sheltered workshops have not always been the low bidders. In other words, they don't win each time.

In your testimony you expressed concern with an overconcentration of sheltered workshop set-asides in certain product categories and, very frankly, many large businesses have expressed similar concerns regarding the inordinate share of certain Federal procurements that are set aside for small business. Do you believe we should look at that overconcentration as well?

Mr. SWAIN. I think you have to take a look at the relative share of the procurements that sheltered workshops are getting in certain product codes now, as opposed to the relative share that small business is getting in the set-aside. If sheltered workshops are getting a whole lot in a particular category now, small business isn't getting very much, and most of what they get is through a set-aside.

If sheltered workshops go into that area, and are successful in that set-aside, that means that there is going to be a fairly dramatic shift in the mix of procurement vendors in that particular area from small firms to sheltered workshops.

That is why we propose some overall limitations to cushion that shift. If in fact it will occur, it will occur on a very measured, moderate basis and not be overly dramatic to those few small firms in a particular industry.

Senator WEICKER. You suggest that any contract awarded under 15(c) of the Small Business Act should not be transferable under Javits-Wagner-O'Day. Would you be satisfied if, instead, any contract transferred over to Javits-Wagner-O'Day counted toward the annual ceiling?

Mr. SWAIN. I think in all candor, Senator, the annual ceiling of $50 million in the bill now is not going to really impose any restriction. It is way above whatever the ceiling would be. I think that the problem is not the total so much; the problem is people who make something in a particular area.

If somebody is making clocks and they can't sell clocks to the Government because a sheltered workshop has the contract, that manufacturer doesn't know whether it is because of Javits-Wagner-O'Day or whether it is because of the small business set-asides.

So I think we have to go beyond that ceiling and go down to a smaller unit, whether it is product or contract or whether it is procuring activity, such as all Federal Supply Service activities or all DLA activities or whatever. There are a number of ways to do it, but I think that $50 million doesn't really get to the issue.

Senator WEICKER. On page 5 of your statement you call for a $75,000 contract cap and a 5-percent limit on each contracting activity's total needs. How many of the set-aside contracts that went to workshops between 1981 and 1983 would have been excluded under those criteria? Don't your standards interfere with economic efficiency? How did you arrive at the figure?

Mr. SWAIN. I don't know, and I don't believe that anyone knows what the record was in 1981 through 1983. That is one of our big problems, everybody's big problem. We don't really know what happened in 1981 and 1983 because, frankly, the SBA didn't keep very good records.

This is an issue involving basically the way the Government manages its purchasing, and I am not sure that—there is always a tradeoff between whatever goals there are, or whether they are purchasing from small businesses or purchasing from sheltered workshops and handling the purchasing.

Whether it would interfere with economic efficiency I don't know. There are probably arguments both for and against that.

Senator WEICKER. Senator Dixon.

Senator DIXON. Good morning, Mr. Chairman. I have no questions. Frankly, I have another hearing at 10 o'clock. I just thought I would drop by.

Senator WEICKER. It's a pleasure to have you with us.

Senator DIXON. Thank you, sir.

Senator WEICKER. And I know that Senator Dixon has also been a great supporter of the sheltered workshop concept.

[The prepared statements of Senators Dixon and Pressler follow:]

ALAN J. DIXON
ILLINOIS

United States Senate
WASHINGTON, D.C. 20510

Statement by Senator Alan Dixon

Senate Committee on Small Business

Reauthorization of Workshop Eligibility
for Government Contracts

March 26, 1986

Mr. Chairman, today we are hearing testimony about legislation which restores the eligilility of Sheltered Workshops to compete for government contracts under the small business set-aside program.

When similar legislation was approved in the past, its impact on small business was minimal, but in terms of the individuals involved, its impact was significant. Between FY1981 and FY1983, small business contract awards totaled $81.7 billion. During the same period, small business set-aside awards totaled $37.5 billion, but set-asides for Workshops amounted to $6.7 million, or .008% of the total small business awards and .017% of the small business set-aside awards.

As reflected by these statistics, there has been no apparent serious adverse impact on small business by having Workshops participate in bidding for set-aside contracts. On the contrary, the loss of these awards greatly affect the training and work experience provided to severely disabled people and make them dependent on Federal benefit programs. Keeping these individuals productive is one of the key objectives of this program.

The bill we are addressing sets up various safeguards which are designed to ensure that small businesses will not be negatively impacted by Workshop participation in set-asides. Yet, information I have received indicates that perhaps these safeguards need to be revisited to insure that not only are competing small businesses not negatively impacted, but also that the employees of the Workshops receive the major benefits of awards granted under set-aside provisions.

Mr. Chairman, I appreciate the opportunity to participate in this hearing. I look forward to the testimony of today's witnesses as we explore the Workshop set-aside participation issue.

STATEMENT OF SENATOR LARRY PRESSLER

FOR A

SMALL BUSINESS COMMITTEE HEARING ON

S. 2147: REINSTATING WORKCENTER ELIGIBILITY

TO COMPETE FOR SMALL BUSINESS SET-ASIDES

I WANT TO COMMEND CHAIRMAN WEICKER FOR HOLDING THIS HEARING AND INTRODUCING S. 2147, OF WHICH I AM A COSPONSOR. PREVIOUS AUTHORIZATION FOR WORK CENTERS TO COMPETE FOR SMALL BUSINESS SET-ASIDES EXPIRED IN SEPTEMBER OF 1983. ALTHOUGH BOTH HOUSES OF CONGRESS PASSED LEGISLATION REAUTHORIZING ELIGIBILITY IN THE 98TH CONGRESS, THE BILL DIED IN CONFERENCE DUE TO REASONS UNRELATED TO THE WORK CENTER ISSUE.

IN SOUTH DAKOTA WE HAVE 17 LICENSED WORK CENTERS. DURING THE CHRISTMAS BREAK, I HAD THE UNIQUE PRIVILEGE OF TOURING ONE OF THESE WORK CENTERS. DURING MY TOUR OF THE SIOUX VOCATIONAL SCHOOL IN SIOUX FALLS, SOUTH DAKOTA, I WAS ABLE TO WITNESS, FIRST HAND, THE OPERATIONS OF A WORK CENTER -- AN EXPERIENCE I STRONGLY RECOMMEND TO MY COLLEAGUES. HANDICAPPED INDIVIDUALS ARE CAPABLE OF MAKING A CONTRIBUTION TO OUR ECONOMY, AND SHOULD BE ALLOWED THAT OPPORTUNITY.

SINCE THE PASSAGE OF THE ORIGINAL WAGNER-O'DAY ACT IN 1938, IT HAS BEEN A FUNDAMENTAL STATED POLICY OF THE UNITED STATES GOVERNMENT TO PROVIDE EMPLOYMENT OPPORTUNITIES TO PEOPLE WITH

SEVERE DISABILITIES. PUBLIC LAW 96-302 EXTENDED THIS DESIRABLE GOAL BY USING THE TREMENDOUS PURCHASING POWER OF THE FEDERAL GOVERNMENT AS A CATALYST TO STIMULATE EMPLOYMENT OPPORTUNITIES IN SHELTERED WORK CENTERS. BY EXTENDING SMALL BUSINESS SET-ASIDE PREFERENTIAL PROCUREMENT OPPORTUNITIES TO WORK CENTERS EMPLOYING SEVERELY HANDICAPPED PEOPLE, WORK CENTERS' CONTRACT BASES CAN BE INCREASED AND MORE JOBS CREATED FOR WORKERS WITH SEVERE DISABILITIES.

THERE ARE SOME CONCERNS, HOWEVER, THAT NEED TO BE ADDRESSED. THAT IS WHY WE ARE HERE TODAY. IN OUR ZEAL TO PROVIDE OPPORTUNITIES TO HANDICAPPED INDIVIDUALS, WE MUST NOT DISCRIMINATE AGAINST OTHER FOR-PROFIT SMALL BUSINESSES. FOR THIS REASON, S. 2147 HAS BEEN CAREFULLY DRAFTED SO AS TO MINIMIZE ANY ADVERSE IMPACT ON SMALL BUSINESSES. S. 2147 INCLUDES A SUNSET PROVISION, A LOWER CEILING THAN IN PREVIOUS LEGISLATION, AND MAINTAINS AN APPEALS PROCESS FOR FRUSTRATED SMALL BUSINESSES THAT FEEL THEY ARE LOSING JOBS TO ELIGIBLE WORK CENTERS.

THERE ARE CURRENTLY ABOUT 5000 WORK CENTERS IN THE NATION. ONLY ABOUT 300 OF THESE WORK CENTERS ARE ACTUALLY PRODUCING UNDER THE JAVITS-WAGNER-O'DAY ACT. THERE ARE APPROXIMATELY 14 MILLION SMALL BUSINESSES IN OUR COUNTRY. HOWEVER, NUMBERS ASIDE, THE FEDERAL GOVERNMENT HAS A RESPONSIBILITY TO LOOK OUT FOR BOTH. THE SMALL BUSINESS SET-ASIDE PROGRAM, TOGETHER WITH A PROVISION LIKE S. 2147, ALLOWS US TO DO JUST THAT. THE $50 MILLION CEILING FOR WORK CENTERS HELPS TO ENSURE THAT WE ARE NOT HELPING ONE GROUP AT THE EXPENSE OF THE OTHER.

Senator WEICKER. Thank you very much, Mr. Swain.

Mr. SWAIN. Thank you, Mr. Chairman.

Senator WEICKER. I ask unanimous consent that a fact sheet prepared by the Committee for Purchase from the Blind and Other Severely Handicapped, summarizing orders placed in workshops during fiscal year 1984 be included in the record.

[Material follows:]

COMMITTEE
FOR PURCHASE FROM THE
BLIND AND OTHER SEVERELY HANDICAPPED

FACT SHEET
Orders Placed With Workshops
FY 1984

This is to point out serious differences between the data contained in the table at page 10 of the Statement of Frank S. Swain, Chief Counsel for Advocacy, U.S. Small Business Administration dated March 26, 1986 and that available to this Committee on the procurements of products from blind and other severely handicapped workshops under this Committee's program.

The data contained on page 10 of Mr. Swain's statement, as well as that used as the basis for the conclusions on page 3 of his statement, were obtained from the Federal Procurement Data System. Those data were based on reports submitted by Government contracting offices using Standard Form 279 (Federal Acquisition Regulations (FAR) 53.301-279). It should be noted that that the form makes no provision under Section 19, "Method of Contracting", for reporting procurements from required sources of supply which is the classification in the FAR for procurements from workshops under the Committee's program. Nor is there a specific listing for workshops under Section 23, "Types of Business". The Office of Advocacy reports to us that it used the classification C4 "Other Non-Profit Institutions" under that section to obtain the data shown in the column titled "Sheltered Workshop" in the table on page 10 of Mr. Swain's statement.

Both the General Services Administration (GSA) and the Defense Logistics Agency (DLA) have, in the past, indicated to us that the data reported on Standard Form 279 with respect to orders placed with workshops under this Committee's program was unreliable because the form does not provide for separate, specific identification of procurements under the Committee's program. Several years ago action was proposed to include entries in Sections 19 and 23 which would clearly identify procurements from workshops under the Committee's program. However, those changes were not accepted.

This Committee does not routinely obtain reports on orders placed with workshops under the Committee's program which are broken out by the various product classes (or four-digit product codes) in accordance with Federal Supply Classification System. However, we do obtain data, from time-to-time on the value of orders

placed with workshops by GSA and the Defense Personnel Support Center (DPSC), one of DLA's procurement centers. Procurements by those two agencies alone represent over 75% of the total value of the procurement of commodities under the Committee's program.

In reviewing the data contained in Mr. Swain's statement, we have also attempted to compare the total value of orders to workshops of about $130 million in FY 1984 reported by the Office of Advocacy based on the Federal Procurement Data System, and the total sales of commodities of $195 million reported to us by workshops in FY 1984. Total orders to workshops based on the Federal Procurement Data System account for only two-thirds of the value of total workshop sales of commodities of $195 million in FY 1984 ($130 million divided by $195 million). The balance cannot be accounted for as being below the reporting thresholds of $10,000 for non-defense agencies and of $25,000 for defense agencies. In fact, GSA records show that the value of purchase orders placed with workshops in FY 1984 was about $119 million. Similarly, DPSC reports placing orders with workshops in FY 1984 totalling over $31 million. Thus, these two agencies above report orders to workshops in excess of $150 million in FY 1984. The balance of workshop sales in FY 1984, some $45 million, was divided among some 50 other procuring activities of the Government. Based on reports from the central nonprofit agencies, only a very small percentage of orders placed with workshops under the Committee's program fall below the $10,000 or $25,000 thresholds.

As the result of complaints in the mid-1970's from two Office Products Associations, the Committee for the past 10 years has been monitoring the impact on that industry of the sales of office products under the Committee's program. Office and related paper products fall largely under classes 7510, 7520, and 7530. The information provided by the GSA office which has responsibility for procuring those three classes of supplies reports that in FY 1984 the value of actual orders placed with workshops was $55 million of total procurements it made in those three classes of $406 million in that year. While the value of actual orders to workshops for the three classes exceeded the nearly $39 million indicated in page 10 of Mr. Swain's statement (7520-$16,072; 7510-$6,689; 7530-$16,199), the total value of procurements in those three classes, as reported by the buying office was over twice the $202 million (7520-$31,225; 7510-$50,720; 7530-$120,361) shown by Mr. Swain. Thus, the impact on the industry as a whole was only about two-thirds that reflected in Mr. Swain's statement (13.5% vs. 19.3%).

In view of the above, the Committee considers that the information obtained from the Federal Procurement Data System is incomplete and inaccurate, and does not give a true indication of the impact of procurements under the Committee's program on the various segments of industry who are competing for similar items being procured by the Government.

Senator WEICKER. Our first panel consists of Mr. Eivind Johansen, president of National Industries for the Severely Handicapped in Vienna, VA, and Dr. William Wolk, the executive director of the South Shore Rehabilitation Center, North Quincy, MA.

Please, Mr. Johansen, why don't you start off?

STATEMENT OF EIVIND H. JOHANSEN, PRESIDENT, NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, INC.

Mr. JOHANSEN. Yes, sir. Mr. Chairman and members of the committee. We appreciate the opportunity to be here today, and we are for this bill. A description of our corporation, National Industries for the Severely Handicapped, what we do, how we do it is in my written statement. I will not go into that. Let's get right to the heart of the matter.

Why do workshops need to participate in the small business set-aside program? Quite simply, Mr. Chairman, because they need the work, and the people with severe disabilities who they employ need the incomes generated by those stable jobs that the Government contracts usually provide. That is pretty much it in a nutshell.

I want to emphasize that workshops, as organizations, don't hire disabled people to do a job. They locate jobs for people who are severely disabled and who are not able to compete in competitive industry. That is a key point that I think that we and the rest of the people who speak to you today should recognize: The individuals we are talking about today, sir, are not disabled people who work in Dart Drug or on the production line of a for-profit business. They are people who, by definition, are severely disabled, that is, their physical or mental disability is so severe, that they must, in their present state work in a sheltered environment, and cannot work in competitive industry.

Workshops must meet the special needs of these individuals, and they have to be selective with the kind of work that these individuals do. Most Government contracts, including small business set-asides, are beyond the capabilities of workshops—most of them are—but frequently by adapting equipment and changing things around to meet the situation, we can do those kinds of contracts. Accordingly, in evaluating job options, workshops must determine their production methods based not only on industrial efficiency but also on the rehabilitative and therapeutic needs of the individuals.

Mr. Swain mentioned the Javits-Wagner-O'Day Act. Well, it was primarily to address these needs that the Javits-Wagner-O'Day Act was passed, and it does a good job—but they need more. The Department of Labor estimates there are about 5,000 sheltered workshops in the country. We estimate that about 40 percent—about 2,000 of those sheltered workshops—really don't have a great capability to do any production work, so that leaves about 3,000 shops that have some type of capability. Now approximately 300 of those 3,000 are in the Javits-Wagner-O'Day Program. The balance desperately need work for their people who, in many cases, are not duly employed. We have effectively shut them out of a portion of the Government market.

Opponents of workshop participation will argue that workshops have a separate program in Javits-Wagner-O'Day; they ought to be happy with that; and the rest of the Federal market should be restricted to small business and others. It is true that they have a special program in Javits-Wagner-O'Day, just as minority businesses have the 8(a) Program. They can participate in the 8(a) Program but they can also participate in small business set-asides, which workshops cannot do.

For a variety of reasons many of the contracts set aside for small business are not suitable for the Javits-Wagner-O'Day Program. As a result, without the opportunity to bid, these opportunities are lost to workshops. While the small business set-aside privilege would not provide workshops with the important advantages of contract permanency and longer-term training opportunities that are available—that the severely disabled employees under the Javits-Wagner-O'Day Program are able to achieve—it would provide a valuable adjunct to Javits-Wagner-O'Day for those workshops that could immediately compete in the marketplace when the Government requirement comes up.

If the workshop has experience and if they have the capability and they can immediately bid; if they can provide a quality product at a fair price, then why should the people who work there be denied the opportunity to do this work? By allowing them to participate in small business set-asides, the Government reaps both a cost advantage and a social benefit.

There were a few other questions that were raised in the course of preparing for the hearings that deserve comment. One you alluded to in your question a while ago. Is it fair, really, to extend this opportunity to bid on small business set-asides for workshops when they don't have to pay corporate taxes? Does this give them a competitive advantage over the for-profit business?

The answer is no. This charge neglects to take into consideration the many obligations to severely disabled employees which add significantly to the workshop's overhead costs in running a small business operation. I am certain you are aware of these added actions that have to be accomplished, generally in the rehabilitation area, but just to mention a few: Personal adjustment training, diagnostic vocational evaluation; help with personal health and hygiene; counseling; job placement; transportation; living areas, in some instances; recreational activities; and on and on. Various studies on this subject corroborate this point, including a 1981 General Accounting Office study which examined charges of unfair competition.

Another misconception concerns the minimum wage. There seems to be a perception that because workshops don't have to pay their employees the minimum wage, they are able to shave their production costs and underbid a competitor and win a contract. That is not true. It is true that all workers in a workshop are not paid a minimum wage, but the Fair Labor Standards Act allows special conditions for this situation. Under the criteria allowed, the direct labor costs in the workshop would generally be the same as in private industry, since the rate paid to a severely disabled person is relative to his or her productivity. If that individual has a productivity of, say, 50 percent, then it will take two severely dis-

abled people to do the work of one so-called able-bodied person in industry.

The use of additional direct labor on an individual basis in a workshop also impacts the overall productivity of the entire workshop. By that I mean, to do a job with a work force with an average productivity of 50 percent not only requires twice as many workers, it increases overhead costs, such as extra supervision, more work space, increased use of utilities, and so on and so on.

In practice workshops haven't underbid on contracts. We at NISH and the workshops themselves well realize that they simply are not in the ballpark when it comes to bidding competitively on many Government items. This is evidenced by the fact that we find under the Javits-Wagner-O'Day Program, there are frequent instances when a workshop can't pursue a project because they are unable to produce the item or service at the price the Government will pay.

Some opponents of this legislation charge that because workshops receive public and private contributions, they are able to use them as subsidies that will permit them to underbid their for-profit competitors. They do rely on public and private funds to offset these additional costs that I have mentioned, but it is not true that it allows them to undercut and bid at a more reasonable price. It is because of these additional services that these additional costs exist. The same 1981 GAO study that I mentioned alluded to the point that I am making.

The final argument voiced against this legislation concerns the economic impact of the legislation on the for-profit small businesses. If workshops are allowed to participate in the small business set-aside program, will they take a lot of business from the for-profits? As I mentioned earlier, there are approximately 5,000 workshops in the United States. This small number could hardly threaten the Nation's 14 million small businesses.

I have a couple of charts to quickly show you this pictorially. I know you are familiar with these figures but I think looking at them sometimes demonstrates the point. During fiscal years 1981 through 1983, which were the last 3 years of eligibility, small business awards totaled $81.1 billion. Small business set-aside awards totaled $37.5 billion. Now, Mr. Chairman, if you will look very closely you will see this small area on the pie chart. (Indicating chart.) Those were the workshop awards that were won during the 3-year eligibility period—$6.7 million. That accounted for less than three hundredths of 1 percent of the small business set-aside awards. In other words, for every $100 awarded to small business as set-asides, less than 3 cents was awarded to workshops.

Now if you look at this from the national perspective on the other chart you can see that in fiscal year 1984—the last year that we have data from the Government—$155 billion was the total Government contract awards. In this particular year, $15.8 million was awarded under the Javits-Wagner-O'Day Program for the other severely handicapped, which is a good indicator of Government business. There may be a little other Government business out there but not much, and again, you have to look hard to see that.

Now this doesn't mean, Mr. Chairman, that every for-profit small business firm was, or will, be happy about the small impact on the total small business community, especially if they are the next lowest bidder and the workshop won, but the same situation exists when a contract is lost to a particular firm that is bidding against other small business firms. Somebody has to lose, and that "somebody" is not going to like it. The question is, was the contract won in a fair fight? We believe we have answered that question as far as the workshop is concerned. If anything, the workshop participates in the bidding contest with one hand tied behind its back.

Mr. Chairman, that completes my presentation. There were some comments made by Mr. Swain that we do not agree with. I would be happy to answer those questions a little later.

[The prepared statement of Mr. Johansen follows:]

WRITTEN STATEMENT BY

Eivind H. Johansen, President

National Industries for the Severely Handicapped, Inc.

Before the Senate Committee on Small Business

on S. 2147

March 26, 1986

Mr. Chairman, Senator Kerry, and Members of the Committee, I am Eivind H. Johansen, President of National Industries for the Severely Handicapped, Inc., more commonly known by its acronym, NISH. I appreciate the opportunity to be here today to support reauthorization in the Small Business Act of the eligibility for sheltered workshops to bid on small business set-asides. Hereafter, I will refer to "sheltered workshops" as "workshops".

A short description of our corporation will help you to understand why we are interested in this bill. NISH is a nonprofit corporation that provides technical assistance to workshops interested in securing Federal contracts under the mandatory procurement provisions of Public Law 92-28, the Javits-Wagner-O'Day (JWOD) Act. Our primary objective is to provide jobs for people with severe disabilities. At the suggestion of Congress, NISH was organized in 1974. Its establishment was supported by a coalition of national agencies long connected with serving persons with severe disabilities. They are: Association for Retarded Citizens of the United States; Goodwill Industries of America; National Association of Jewish Vocational Services; National Association of Rehabilitation Facilities; National Easter Seal Society; and United Cerebral Palsy Associations. These organizations are the major

rehabilitation agencies with direct involvement in operating and providing assistance to workshops serving individuals with severe disabilities. They hold permanent organizational seats on the NISH Board of Directors and work closely with NISH staff to help provide job opportunities to people who desperately need them.

All of these organizations strongly support S. 2147. Representatives of these agencies requested the opportunity to testify today, but with the exception of National Association of Rehabilitation Facilities, they were unable to do so because of your time limitations. They will be submitting comments for the record.

I am here today to stress the need for workshops to participate in the small business set-aside program.

I would like to begin by saying that the issue of the suitability of workshops bidding on small business set-asides has been addressed by the Congress several times in the past. In fact, Congressional intent to make small business set-asides available to workshops has been consistent since 1977 when Congress amended the Small Business Act to allow workshops employing people with severe disabilities to bid competitively on these contracts (P.L. 95-89). The statutory extension of workshop eligibility for the program was proposed by the Congress and included in the Omnibus Small Business Act of 1978. The bill was vetoed by the President for reasons not related to the workshop issue. In 1980, the 96th Congress again addressed workshop eligibility to bid on small business set-asides for a three-year period. That eligibility lapsed at the end of the designated time frame (September 30, 1983). Since that date, both Houses of Congress have continued to express

the intent that workshops should be eligible to bid on set-asides (as evidenced by the passage of H.R. 3020 and S. 1323 in the 98th Congress).

Why do workshops need to participate in the small business set-aside program? Quite simply because they need the work, and the people with severe disabilities they employ need the incomes generated by stable jobs that government contracts usually provide. Workshops, as organizations, do not hire disabled people to do a job -- they locate jobs to provide employment to people whose mental and/or physical disabilities are so severe that they cannot hold a job in the competitive marketplace. Let me emphasize this point -- because it is most important in the discussions today. The individuals we are talking about are not the disabled people working at Dart Drug or on the production line of a for-profit business. They are severely disabled -- and by definition, their physical or mental impairment must be so severe that they cannot, in their present state, be employed in the competitive marketplace. Their disabilities include multiple sclerosis, muscular dystrophy, cerebral palsy, mental retardation, neurological damage caused by trauma, and emotional instability. The workshop to them is, in actuality, an employer of last resort.

Workshops must meet the special needs of these employees, and they have to be selective about the types of work the employees do. Most government contracts, including most small business set-asides, are beyond the capabilities of workshops. Frequently, equipment must be specially adapted in order to be used by people with severe disabilities. Workers with disabilities may function at high levels only for limited periods of time and often require special medical treatment.

Accordingly, in evaluating job options, workshops must determine their production methods based on rehabilitative and therapeutic needs in addition to industrial efficiency. To meet their purpose of training people with disabilities, workshops must concentrate on labor-intensive work, rather than on work that can be mechanized. Workshops thus base their selection of work more on volume or availability than on revenue-producing factors.

It was primarily to address these needs that the JWOD Act was passed. The JWOD Act does a superb job of providing employment and training options needed by people with severe disabilities. But they need more. The Department of Labor estimates there are about 5,000 workshops in the country today. We estimate that 40%, or 2,000 of the 5,000, have no meaningful production capability now, nor will they have adequate capability in the future. Approximately 300 of the remaining 3,000 workshops are doing JWOD work for the government. The balance desperately need jobs for their employees to do, and since they cannot now bid on small business set-asides, they are effectively shut out of a good portion of the government market. Even the successful JWOD workshops need more jobs to handle the volume of severely disabled people they deal with. P.L. 94-142 was a great piece of legislation, and it radically changed the lives of people with severe disabilities for the better. But the same people that needed "special ed" programs are beginning to move out of the school system and into the marketplace. They also need supported employment programs. This bill is one way we could supply a helping hand.

Workshops are not defined by law as small businesses, but they have many similar characteristics. They are small in size in

terms of their direct labor workforce. Workshops are usually created as a community effort to fill a need. They depend on the local community for support, and many local families depend on the employment provided by the workshop for their sons or daughters as the only option open to them except institutionalization. Generally, a few key individuals are the moving forces of the organizations. Most workshops have limited resources and cannot undertake large projects.

Workshops survive on contract work, much the same way as small businesses. This is their vehicle to provide earnings and skill development opportunities for their employees with severe disabilities. Often the small contract that is appropriate for small businesses is exactly the type of contract that is suitable for workshops. This is because the workshop has limited resources and must depend on what it can borrow from the bank down the street. Although workshops could never participate in the wide range of contracting opportunities that small businesses do, it is the small government contract that is most likely to be suitable for workshops in terms of their limited inventory, capital, flexibility, and unique workforce.

It would be a great help to workshops and the people they employ if they could again participate in small business set-asides. In some parts of the country, particularly rural areas, the only Federal contracts available have already been set aside for small businesses. In small communities there may be very few business opportunities, but there are always post offices and military reserve or recruiting offices nearby; and the opportunity to clean those buildings or provide grounds maintenance would mean a great deal to

an individual with severe disabilities. If workshops in those areas are precluded from bidding, they, too, are effectively squeezed out of a portion of the government market.

Opponents of workshop participation argue that workshops have a separate program in JWOD and participation in the Federal market should be restricted to that program. It is true that workers with disabilities employed in workshops do have a separate program in JWOD, just as disadvantaged, minority businesses have the 8A program. Yet while 8A firms are allowed to bid on small business set-asides in addition to the 8A program, workshops are shut out. Congress should consider one additional category of disadvantaged business -- workshops employing citizens with severe disabilities.

For a variety of reasons, many contracts set aside for small businesses are not suitable for JWOD. As a result, without the opportunity to bid on small business set-asides, these opportunities are lost to workshops. JWOD has a number of very specific legal requirements which limit the kinds of items that may be set aside. For example, workshops cannot, under JWOD, consider one-time contracts -- the contract must be for an on-going requirement. Other contracts that would be available for set-aside bidding that are not available under the JWOD program include contracts requiring assembly only; contracts which involve a close interrelationship with private industries; items not purchased centrally; and items not governed by Federally-controlled specifications, such as multiple award GSA supply schedule items.

While the small business set-aside privilege would not provide the workshop with the important advantages of contract permanency and the longer term training opportunities for their severely disabled employees that are available under the JWOD

program (unless the contract was later brought under the auspices of the JWOD program), the set aside would provide a viable adjunct to JWOD for those workshops that could immediately compete in the marketplace when the government requirement comes up. If a workshop has the experience and capability to immediately bid and can do quality work at a fair, competitive price while it employs people with severe disabilities, why should it be precluded from doing so? By allowing the workshop to participate in small business set-asides, the government reaps both a cost and social benefit.

There were a few other questions that were raised in the course of preparing for the hearing that deserve comment.

Is it fair to extend this opportunity to bid on small business set-asides to workshops when they do not have to pay corporate taxes? Does that give them a competitive advantage over for-profit small businesses?

It has been a contention of small business organizations that workshops present unfair competition. This charge neglects to take into consideration the many obligations which add significantly to the workshop's overhead costs in running a small business operation. Workshops incur many costs directly related to the severe disabilities of their employees. Rehabilitation and social services provided include personal adjustment training, diagnostic vocational evaluation, help with personal health and hygiene, counseling, job placement, transportation, independent living services, and recreational activities. Various studies on this subject corroborate this point. A 1981 General Accounting Office (GAO) study examining charges of unfair competition found that "... even though sheltered workshops in their capacity as nonprofit organizations may receive

certain competitive advantages over other businesses, the effect of the advantages may be offset by the increased costs of serving and employing a handicapped labor force which generally functions at a significantly lower level than a nonhandicapped labor force." The independent Greenleigh Study, commissioned by HEW, supports this premise, stating that for the overwhelming majority of workshops, business income is not sufficient to meet costs, even when costs include subminimum wage payments. These extra costs were summarized by Greenleigh to include extra supervision, extra training, and special machinery and equipment.

Another misconception concerns the minimum wage issue. There seems to be a perception that because workshops do not have to pay their employees the minimum wage, they are able to shave their production costs and underbid a competitor to win a contract. This is not true. It is true that not all workers in a workshop are paid a minimum wage, but the Fair Labor Standards Act allows special certificates to be issued by the Department of Labor which require that workers with severe disabilities not paid minimum wages be paid on the basis of their productivity. Under these criteria, the direct labor costs in the workshop will generally be the same as in private industry since the rate paid to the severely disabled person is relative to his/her productivity (i.e., a 50% worker will be paid $2.00/hr. for a job usually paying $4.00/hr. to a person without a disability). To produce the product or the service will require two persons with severe disabilities instead of one non-disabled person. The use of additional direct labor on an individual basis also impacts the overall productivity of the entire workshop. To do a job with a workforce with an average

productivity of 50% not only requires twice as many workers, it increases overhead costs, i.e., extra supervisors, more work space, increased use of utilities, and more equipment and work stations. These are production costs that have a direct effect on the cost of goods produced or services provided. As stated, there are often needs for specialized professional personnel to serve the special needs of the severely disabled person. Add to this the reductions in government funding to provide the special training, counseling, and other work services; the result is that most workshops end up paying these human resources costs from business income. All of these factors add to the workshop's overhead costs simply because the overall productivity of the entity (workshop) is lower than the normal for-profit business. However, in some instances, the workshop's direct labor cost alone may be higher than the direct labor cost in the for-profit business since Department of Labor procedures demand more documentation and enforcement of labor laws for workshops than for-profit businesses. For example, if the prevailing wage in the community for a particular job is $4.50/hr., all wages for persons with severe disabilities in the workshop must be based on that rate. For two individuals at 50% productivity, the direct labor cost for one 100% unit of output would be $4.50 per hr. (2 x $2.25). However, the for-profit business may pay only the minimum wage of $3.35/hr. (providing the competitive market allows) for one person per 100% unit of output with no interference from Department of Labor. Therefore, the workshop direct labor cost for one 100% unit of output per hour is $1.15 greater ($4.50 - $3.35/hr.) than for the for-profit business.

Workshops are required to do a productivity analysis and maintain the documentation necessary to back up their wage rates. Department of Labor compliance officials review these records, and if a workshop is found to be in violation, back wages and punitive fines must be paid.

With regard to charges of underbidding, the special wage certificates authorized by the Department of Labor are issued contingent on the condition that workshops may not compete unfairly in the sale of their products. The Department of Labor is charged with the responsibility of determining if a workshop is engaged in the practice of undercutting commercial industry by selling its products at unfair competitive prices. Any small business that feels that workshops are undercutting commercial sources may ask the Department of Labor to investigate.

In practice, workshops have not underbid on contracts. We at NISH and workshops themselves well realize that they simply are not in the ballpark when it comes to bidding competitively for many government needs. This is evidenced by the fact that we find, under the JWOD program, there are frequent instances when a workshop cannot pursue a project because they are unable to produce the item/service at the price the government will pay.

Some opponents of this legislation charge that because workshops receive public and private contributions, they are able to use them as subsidies which then permit them to underbid their for-profit competitors. Workshops do rely on public and private

funds to offset their additional operating costs. However, because of the additional services workshops provide, the 1981 GAO Report concluded that, "As a result, many private nonprofit corporations operating sheltered workshops would not be able to operate without receiving other sources of income." Interestingly enough this study was done in 1981, before the full impact of reduced government funding for vocational rehabilitation programs had begun to be felt. Funding for vocational rehabilitation programs will probably be reduced even more in the years to come as further budget cuts are implemented. Such reductions alone provide a compelling need on the part of workshops to expand their contracting opportunities and try to become more self-sustaining. Workshops should not be punished for attempting to make themselves more independent.

A final argument voiced against this legislation concerns the economic impact of this legislation on the for-profit small businesses. If workshops are allowed to participate in the small business set-aside program, will they take a lot of business away from for-profit small businesses? As mentioned earlier, there are approximately 5,000 workshops in the United States of which a significant number have no current or future production capability. This small number of workshops could hardly threaten our nation's 14 million small businesses. This chart (chart 1) illustrates the point. During fiscal years 1981 to 1983 (the last three years the set-aside privilege was available), small business awards from government totaled $81.1 billion. Small business set-aside awards totaled $37.5 billion. NISH records indicate that set-asides won by workshops totaled only $6.7 million. Although the NISH records are informal, we feel total participation could not have amounted to

more than $10 million, given our knowledge of the workshop community and the small number of workshops that were capable of bidding competitively. Using the higher $10 million figure, workshops awards still accounted for less than three-hundredths of one percent of the small business set-aside awards. In other words, for every $100 awarded to small business as set-asides, less than 3¢ was awarded to workshops.

Workshop participation in the small business set-aside program would be further limited by the $50 million cap in S. 2147. In fiscal year 1984, $33 billion in contracts were awarded to small businesses. The $50 million ceiling placed on workshop participation would limit workshop participation at a maximum to fifteen one-hundredths of one percent, a minute fraction of small business contracting opportunities.

From the national perspective, let's look at this chart (chart 2). The total dollar value of government contract awards for FY84 were $155.1 billion (latest government figures available). In comparison, the dollar value of government contracts awarded to workshops employing the severely disabled for the same period amounted to $15.8 million under the JWOD program, which is a good indicator of workshop government business. This means that the workshops' share was one, one-hundredths of one percent of the total U.S. government market. In terms of national perspective, the workshop's piece of the procurement pie is negligible. Allowing workshop participation in the small business set-aside program would enhance that amount only slightly. It would have a minute impact on the small business community, but its value to workshops and their employees with severe disabilities would be significant.

This does not mean that every for-profit small business firm will be happy about the small impact on the total small business community, especially if they are the next lowest bidder and a competing workshop wins. But the same situation exists when a contract is lost to a particular firm that is bidding against other small business firms. Somebody has to lose, and that "somebody" is not going to like it. The question is: "Was the contract won in a "fair" fight?" We believe we have answered that question as far as the workshop is concerned. If anything, the workshop participates in the bidding contest with one hand tied behind its back.

In summation, Mr. Chairman, small businesses and workshops represent two special groups which previous Congresses have considered worthy of special treatment. We believe that the Federal procurement market is so vast that it leaves room for the participation of both of these groups without significant adverse consequences.

Through employment in workshops, many individuals with severe disabilities have learned work skills and life skills that have permitted them to lead more independent lives. Many have left institutions because employment in workshops was available to them. The employment offered by workshops provides salary structures which, in many cases, reducesthe need to pay SSI and other Federal benefits to individuals with severe disabilities. Under the present climate of fiscal austerity, vocational rehabilitation programs are in danger of being reduced. Enhancing the contracting opportunities of workshops and thus creating new jobs for people with severe disabilities is one means that Congress has of providing

a social benefit without the cost of social programs -- which, in effect, would make taxpayers out of tax users.

Thank you for the opportunity to present our views on this important legislation. I will be glad to answer any questions you may have now, or at the conclusion of the presentation by Dr. Wolk.

Senator WEICKER. Thank you.

Senator BUMPERS. Mr. Chairman.

Senator WEICKER. Yes, Senator Bumpers?

Senator BUMPERS. I apologize for being a little late. I would like to ask unanimous consent at this point that an introductory statement of mine be included in the record.

Senator WEICKER. Absolutely, absolutely.

[The prepared statement of Senator Bumpers follows:]

Statement of Senator Dale Bumpers

I commend Chairman Weicker and Senator Kerry for holding this hearing today on legislation which is of great importance to the sheltered workshops operated for the benefit of handicapped and blind individuals.

Sheltered workshops have made an enormous contribution toward helping handicapped individuals become working, productive, tax-paying members of our society, a goal which we all share. These workshops, which are non-profit organizations licensed by the Department of Labor, require that at least 75 percent of their workforce be comprised of handicapped or blind employees. From 1981 to 1983, these workshops were authorized to bid on federal government contracts under the Small Business Act's set-aside program along with for-profit small businesses. During that time period, two Arkansas workshops received very sizeable contract awards. One, for $228,600, went to the Arkansas Society for Crippled Children at Pine Bluff. The other, worth $699,470, was awarded to the St. Francis County Sheltered Workshop at Forrest City. To my knowledge, this was the highest dollar contract awarded to a workshop nationwide.

The program undoubtedly benefitted many state's handicapped and blind citizens while it was in operation and I believe Senator Weicker's bill, S. 2147, which would reauthorize the program for another five years beginning in FY 1987, deserves special consideration by this Committee. I understand that there are some questions concerning the reauthorization of the program in light of the permanent set-aside services provided through the Javits-Wagner-O'Day Act. Moreover, some small businesses claim that they may lose valuable contracts to the protected workshops. These are important concerns which will be addressed by witnesses on both sides of this issue, and I hope that today's discussion will produce some satisfactory answers to those questions. It is important that the reauthorization be accomplished without placing an undue burden on other businesses competing for federal government contracts, while still furthering the national interest in helping the handicapped and blind to become self-sufficient and lead full, productive lives.

I look forward to hearing the testimony of each of today's witnesses.

Senator WEICKER. Mr. Wolk.

STATEMENT OF DR. WILLIAM P. WOLK, EXECUTIVE DIRECTOR, SOUTH SHORE REHABILITATION CENTER, NORTH QUINCY, MA

Mr. WOLK. Mr. Chairman, members of the committee, first of all I want to apologize for my voice. I am just getting over a case of laryngitis. I had hoped for a congressional mandate against the flu, but it hasn't come through, so if you can't hear me just say so, and I'll try to speak a little louder.

I am the executive director of a rehabilitation center, a vocational rehabilitation center in Quincy, outside of Boston, MA, where we work in trying to integrate into the community people with severe disabilities, people particularly with severe mental handicaps and chronic mental illness. I have spent 25 years working in this field, and if there is one thing that I can say in terms of my experiences, that has been most effective in helping to move these severely disabled people into the community, it has been work, real, meaningful work. We have tried all kinds of different training techniques, research, even drugs, at times. Those approaches have been helpful to some extent, but I know of no therapy that is more powerful than meaningful paid work in helping these people to move into our community.

I have brought with me a clip, a 2-minute clip from a film that was made by our agency. The title of the film is "Right to Work." I think this film, part of the film, the end of it that we are going to see, will say to you more, tell you more in 2 minutes than I could communicate to you in perhaps several hours.

We are going to see in this film in particular, a 30-year-old woman whose name is Mary Ann McDonald. She is both retarded and autistic. You will be able to see in the film some of the mannered motions that are characteristic of autistic people. You will also be able to observe her job competence and her pride in her performance. We will hear her and see her father make comments on his daughter's progress and his experiences with her. In the film Mary Ann is working on the manufacture of a urinary leg bag. This is a contract that was originally obtained through the SBA set-aside when we were eligible.

I think if I just show the film and make a few comments afterwards, I will be able to get my points across. When I turn this on there may be a little part before the beginning, so just be aware of that.

Senator WEICKER. Can we turn the lights out? Forget the blinds. Just turn the lights out.

[A short video presentation was made.]

Mr. WOLK. I think you can get an idea from that film as to how that SBA set-aside contract has helped to change Mary Ann's life. You heard her father's moving statement about a miracle, and I would like to point out that it is not a miracle that Mary Ann is able to do that work. She was able to do that work or potentially able to do it before we worked with her. The miracle is that the rest of us saw to it that she had the opportunity to use her potential to get where she is today.

It is important to realize that to us—that is, those of us working directly with these people—that S. 2147 is not just a piece of legislation. It is a vital link in creating the opportunity for people like Mary Ann to be able to work. I think that we know in recent years that, through the help of Congress, the doors of institutions have been unlocked. Many people like Mary Ann who might never have been in the community are out in the community. If we are going to make that deinstitutionalization meaningful and not have it be sort of a trick, we have to provide every possible means of giving these people the opportunity to become a part of our society.

At our particular agency, the SBA set-aside has made a difference. For example, prior to 1983 when we were eligible, we obtained four contracts which put 32 severely disabled people to work. When the eligibility ran out between 1983 and the present, there were at least three contracts that we would have liked to have bid on that would have given us 30 jobs, put 30 more people to work. We lost those.

I would like to say this in conclusion, Mr. Chairman: The Government has made a commitment to improving the lives of severely disabled people—Javits-Wagner-O'Day, the Rehab Act of 1973, Public Law 94-142, the SBA Eligibility Program when it was in effect. We need more help for these people. We don't have enough. We need jobs for them. They can't be here to articulate their own needs but, speaking on their behalf, I would like to say that they need, they want, and they deserve meaningful employment. I believe that S. 2147 will help create that opportunity.

Thank you.

[The prepared statement of Mr. Wolk follows:]

STATEMENT BY

William Wolk, Ph.D.

Executive Director, Work, Inc.

Before the Senate Committee on Small Business

on S. 2147

March 26, 1986

Mr. Chairman, Senator Kerry, Members of the Committee, I am Bill Wolk, Executive Director of Work, Inc., in Quincy, Massachusetts. I appreciate the opportunity to be here today to voice my support for S. 2147, an amendment to the Small Business Act, which would reinstate sheltered workshop eligibility to bid on small business set asides.

For the past 25 years, I have devoted my professional life to working with people who are very severely disabled. I have held a number of positions in the mental health and rehabilitation fields, including clinical psychologist, psychotherapist, and college instructor. I have specialized in the psychology of work. In my current capacity as Executive Director of Work, Inc., I am the administrator of a rehabilitation center located just outside of Boston which serves adolescents and adults with severe mental and physical disabilities. Work, Inc. has a client population of 350 and a staff of 125. Our program components include: vocational-social evaluation; work counseling and training; extended sheltered employment; job placement; and group home and cooperative apartment residential programs. In addition, we run cooperative satellite work programs for 700 students with special needs in 40 public schools to facilitate their transition to adult life. Our program is comprehensive because the needs of people with severe disabilities are

comprehensive. It is not enough to provide a single service to the people we work with every day. They need support in most aspects of their lives.

One of their most critical needs is work. All of us need work to provide meaning and structure to our lives, but these people need it desperately. For the past 20 years, we have tried numerous approaches to effect desirable changes in their lives -- counseling, teaching work preparatory activities, and a variety of other training techniques. Many of these have been successful in helping people to function more effectively, but they fell short of our goal of creating opportunities for meaningful employment. For a while we tried simulated work, thinking we could do more to guarantee future employment opportunity. Again, we had only limited success. What we finally discovered was that nothing we could simulate had as much value as actually doing real work in a real job. Whatever it is -- the setting -- the reward of a paycheck -- the motivation to do as good a job as a co-worker -- whatever, -- nothing else, NOTHING works like work. It is quite surprising how people who are severely retarded can distinguish between make work and real work. Not only do their job and social skills improve when they are given real work to do, but interfering behaviors such as rocking and tantruming are greatly reduced. They become productive human beings, and with that accomplishment comes a whole new person whose dignity, pride, and sense of self-worth are clearly evident.

I've brought with me this morning a very brief film clip about one of the employees who works at Consolidated Products and

Services, a nonprofit affiliate of Work, Inc., which manufactures disposable medical products for hospitals. The woman you will see is 30-year-old Mary Ann McDonald. She has been with us at Work, Inc. and CP&S for eight years. Mary Ann is autistic and severely retarded. In the film you may notice her mannered movements which are characteristic of autism. But you'll also be able to observe her job competence, her pride in her performance, and hear her father's comments on her progress. She is working on a urinary leg bag being produced for the Veterans Administration under a contract originally obtained through the Small Business Administration's set-aside program.

-FILM-

You can see how that small business set-aside contract has helped to change Mary Ann's life. You heard her father's moving statement, and you heard and saw some of the other workers who are benefitting from Federal contracts as well. I think it's important for you to realize that this bill is not just a piece of procurement legislation for us -- but a vital link in making real job opportunities possible for people who are not presently employable in the competitive workforce. Few people know about the clients that workshops serve. Let me tell you about them.

Our clients aren't just disabled. Most of them are <u>severely</u> disabled. Their disabilities are so serious that they cannot find work in the competitive marketplace. They may be severely mentally retarded, chronically mentally ill, autistic, and sight and hearing impaired. Many suffer from seizures, cerebral palsy, or combinations of the foregoing. Historically, they were felt to be such a burden on society that most were locked away in

institutions for years. In short, they have been America's most disenfranchised citizens.

Congress has played a vital role in releasing them from those institutions. Now they must have help in becoming part of our society. If that is not possible, then deinstitutionalization is just a mean trick. Our clients have a right to participate in the community just as we do. Like us, they must be able to work to be full participants in community life. But relatively few kinds of work are suitable for people with severe disabilities. We have to consider a number of factors in determining the jobs our workers can perform -- physical danger, undue mental strain, the need for verbal communication or reading skills, geographic location, accessibility, and transportation must be considered and judged to be appropriate for people with severe disabilities. The work must be labor-intensive, and because of tight fiscal constraints, it cannot require large amounts of up-front capital.

Allowing workshops to participate in the small business set-aside program has made a difference in the past and will make a difference in the future. Our workshop won four small business set-aside awards before our eligibility lapsed in 1983. These contracts provided 32 jobs for people with severe disabilities. The jobs included cleaning the Fitchburg Federal Center; groundskeeping for an IRS building; packaging pocket combs for GSA; and manufacturing urinary bags for the VA. None of these jobs sound terribly glamorous, but for people with severe disabilities the work was significant. It provided vocational training and rehabilitation opportunities for 32 people who would not otherwise have had the benefit of this experience.

Conversely, since workshop eligibility expired in 1983, there have been at least four contracts we could not bid on and thirty jobs that were not available to our clients. Our inability to compete for these contracts was particularly frustrating because we know that our workers could perform the jobs effectively.

The commercial sector has been a good source for some contracts, but our experience has been that government contracts provide a more consistent supply of orders and, therefore, better training opportunities and more stable employment.

Just a short time ago there were few options available for people with severe disabilities. They were locked away in institutions and considered hopeless. With the passage of P.L. 94-142, the Rehabilitation Act of 1973, the Javits-Wagner-O'Day Act, and the now lapsed SBA eligibility program, the Federal government committed itself to improving the quality of life for these people.

Tremendous strides have been made since these laws were enacted, but people with severe disabilities still need the help of the Federal government. They need the opportunity to be gainfully employed. They can't be here today to articulate their needs and concerns or tell you personally what their jobs mean to them. I can only say on their behalf that they need, want, and deserve the opportunity to be meaningfully employed. S. 2147 will help create that opportunity.

Thank you.

Senator WEICKER. I want to thank you both very much. I know there will be further questions for response to the record and I might add, if there is anything additional you want to submit, Mr. Johansen, based on what you heard here, please do so. I thank you both for your endeavors on behalf of the handicapped. You are right. That little film clip is very important. I wish all Americans could see it. I thank you both very much.

The next panel will consist of Barry Trilling of Trilling & Kennedy; J. Eliott Barrow, president of Jebco, Inc., Warrenton, GA, who will be accompanied by Stanley Hackett; Mr. Colin Offenhartz, president of FRAASS Survival Systems; and Mr. William McAllister, president of HLI Lordship Industries. You gentlemen make yourselves comfortable. We will begin in just 1 minute.

All right. Mr. Trilling, why don't you start off?

STATEMENT OF BARRY J. TRILLING, ESQ., TRILLING & KENNEDY, ATTORNEYS AT LAW, WASHINGTON, DC

Mr. TRILLING. Mr. Chairman, my name is Barry Trilling. Seated at the table with me are Colin Offenhartz, president of FRAASS Survival Systems, Bronx, NY; William J. McAllister, president of HLI Lordship Industries, Hauppauge, NY; and Eliott Barrow, president of Jebco, Inc., Warrenton, GA.

You will hear today the reasons each of us has to believe that thousands of small businesses will be injured if S. 2147 is enacted. Further, you will hear from us why we believe the handicapped will be injured if S. 2147 is enacted. While we have each submitted written remarks, we welcome this opportunity to highlight our concerns about this legislation.

In a nutshell, we are concerned that S. 2147 will not only injure small business but that it will be counterproductive to providing jobs for handicapped, and that it will result in significantly increased costs to the Government. First, it is not necessarily true that by increasing workshop contracts, more handicapped jobs will automatically be created. In fact, such jobs may be destroyed as a result of work lost by for-profit contractors who have hired and promoted handicapped workers in compliance with the Rehabilitation Act, and who have subcontracted substantial amounts to workshops, mental hospitals, and rehabilitation centers.

S. 2147 contains no provision to offset these potential job losses. Rather, the bill contains an ambiguous provision requiring 75 percent of the direct labor performed in the workshop to be done by handicapped workers. This provision might be interpreted to allow the subcontracting of almost unlimited amounts of direct labor to subcontractors who have no handicapped workers.

For example, if it takes 100 hours to make a product, able-bodied subcontractors could provide 90 of those hours, yet the workshop would remain eligible for the award if its handicapped workers performed 8 of the 10 remaining hours of work—92 hours of work created for able-bodied workers, 8 hours of work created for the handicapped under S. 2147. Meanwhile, the for-profit contractor may have to eliminate the jobs of a greater number of handicapped employees than the workshop has used to perform the contract. This would be inconsistent with the assurance in the Congressional

Record that work created under S. 2147 will be channeled to its legitimate beneficiaries.

Second, S. 2147 will result in higher costs to the Government. This will come about because workshops will use competitive awards, as they have in the past, as stepping stones to exclusive Javits-Wagner-O'Day Act set-asides in which noncompetitive higher prices are guaranteed. Under that statute, the Committee for Purchase from the Blind and Other Severely Handicapped requires Government agencies to purchase designated items on an exclusive, noncompetitive basis from specific workshops. The base price set by the committee for purchase for those items is always 5 percent above the most recent award price, and that price is again adjusted semiannually every year thereafter.

The Javits-Wagner-O'Day process is initiated by a workshop, when it requests the Committee for Purchase to assign it the exclusive production of a commodity. In deciding whether to make a Javits-Wagner-O'Day Act assignment, the Committee for Purchase must find that the workshop is capable of producing the item and that the current or most recent contractor for the item will not suffer serious economic injury. There is, thus, ample incentive for workshops to submit predatory low bids in order to become the current or most recent contractor. By doing so, they not only demonstrate their capability but they preclude any for-profit company from complaining about the permanent removal of the item from the marketplace. The result: Higher cost to the Government and the exclusion of any for-profit contractor not only from producing the item but from objecting to its exclusive Javits-Wagner-O'Day Act assignment to the workshop.

Finally, notwithstanding Javits-Wagner-O'Day Act conversions, small businesses will be further injured by low workshop bids. My written remarks go into some detail with regard to how workshops have these advantages and how the additional work which they must provide, the additional assistance they must provide for the handicapped, is made up by a number of services. The workshop's exclusion from minimum wage and tax laws, however, and the receipt of other public and private charitable contributions, gives them an unfair, competitive advantage. These artificially low operating costs unfairly result in lower bids.

The small business set-aside program is not so large—as Mr. Johansen tried to demonstrate—that it can easily absorb without injury the award of contracts to workshops who enjoy such advantages. Those contractors whose business will be taken by workshops have no other place in the small business program to make up for their losses. That is, the effect of S. 2147 will not be spread evenly throughout this $10 billion a year program; it will be concentrated on only several hundred million dollars in contracts for which workshops and small businesses are in direct, head-to-head competition.

The businesses who accompany me here today typify these impacted areas: Battlefield medical devices; military decorations, and ribbons; and metal office furniture. Workshops have already diminished the program upon which these businesses depend for their livelihood, and their workers, and their families, and their handicapped workers depend for their livelihoods, by over $268 million per year

for the Javits-Wagner-O'Day Act, and many millions more have been diverted to convict labor through the Federal Prison Industries Program. For the reduced amount remaining, the competition is already fierce. It is simply unfair to eviscerate further this program designed for the benefit of the small businesses which S. 2147 would injure.

Mr. Offenhartz, Mr. McAllister, and Mr. Barrow each have statements. I would be happy to open for questions now or afterwards.

[The prepared statement of Mr. Trilling follows:]

59-836 0 - 86 - 3

TRILLING & KENNEDY
ATTORNEYS AT LAW
SUITE 310
1900 L STREET, N.W.
WASHINGTON, DC 20036

BINGHAM KENNEDY
BARRY J. TRILLING

(202) 223-1577

BEFORE THE COMMITTEE ON SMALL BUSINESS
OF THE UNITED STATES SENATE

MARCH 26, 1986 HEARING ON S.2147

STATEMENT OF BARRY J. TRILLING ON BEHALF OF
REPRESENTATIVE SMALL BUSINESSES

On behalf of the eleven small businesses identified below, I appreciate the opportunity to comment upon S.2147, legislation which would amend section 15(c) of the Small Business Act to enable nonprofit workshops for the blind and handicapped to be awarded government contracts which are now exclusively "set-aside" for small businesses. These eleven companies, and hundreds of others like them who are engaged in government contract work would suffer severe economic consequences if this legislation were enacted in its current form. Typical of the individuality of small business, each of these companies has its own perspective -- and you will hear the particular view of three of those companies today: Jebco, Inc. of Warrenton, Georgia; Fraass Survival Systems Inc. of Bronx, New York; and H.L.I. Lordship Industries, of Hauppauge, New York.

Although the companies who will be effected by S.2147 comprise a wide range of manufacturing, their ability to compete

for small business set-aside contracts is limited to a relatively narrow area where they already face competition both from workshops for the blind and handicapped under the Javits-Wagner-O'Day Act ("JWOD"), 41 U.S.C. §46 et seq., but also from Federal Prison Industries under 18 U.S.C. 4121 et seq. Their manufacture of such items as furniture, field hospital equipment, decorative medals and badges, medical devices such as first aid kits and bandages, clothing, and other products is highly competitive for the limited amount of work available. Each of these companies is the sort of business which the small business set-aside program is intended to benefit, and most are family owned and operated. All of these companies confront daily competitive pressures in the market place, unfavored by the exemptions from tax and minimum wage laws possessed by the workshops, and not supported by other federally funded programs or charitable contributions such as those enjoyed by the workshops.

These small businesses share a concern for the dignity and self respect of blind and handicapped persons which can be achieved through gainful employment. Small business government contractors take pride in their compliance with the Rehabilitation Act, which requires federal government contractors to recruit, hire, and promote the disabled. In addition many

small businesses provide employment for the blind and handicapped by subcontracting work to sheltered workshops, rehabilitation clinics, and psychiatric hospitals. This is all in addition to the contributions many small businesses make by employment of minorities, especially in areas of high unemployment. As I shall explain in more detail later in these remarks, however, the laudable purpose of providing employment opportunities for those otherwise unable to work would not be served by diminishing the ability of small businesses to compete for the award of government contracts, as S.2147 would do.

In the last session of Congress both the House and Senate passed bills similar to S.2147. As with S.2147 today, however, most small businesses which would have been affected by those bills were not even aware that the bills had been introduced and therefore presented no arguments in opposition. For reasons unrelated to our concerns today, those bills did not survive a conference committee. Fortunately, today there are at least a few companies which are aware of S.2147, but these businesses have no organization or association to parallel the workshop interest groups such as the National Association of Rehabilitation Facilities ("NARF"), the National Industries for the Severely Handicapped ("NISH"), and their blind workshop

counterparts to muster support or finance an effort in opposition.

Our clients have the following concerns:

1. S.2147 Will Not Assure Employment of Handicapped and Blind Workers.

In introducing S.2147, Senator Weicker stated that the bill would require

> "that at least 75 percent of the work done in manufacturing any product or providing any service under this program must be performed by handicapped or blind workers. We do not want contracts awarded to workshops which do not channel the work to the legitimate beneficiaries."

Cong. Rec. S 2215, March 6, 1986. Senator Quayle also stated that, "the bill requires that at least 75% of the work done on each item must be produced by the handicapped workers themselves." Id.

Unfortunately, as currently worded, S.2147 does not clearly reflect this intention. Rather, in requiring that "at least 75% of the direct labor performed on each item produced under the contract in the sheltered workshop *** is performed by handicapped or blind individuals," the bill would appear to allow a workshop to employ able-bodied labor to perform the contracts

obtained. That is, a workshop might be allowed to subcontract 90% of the direct labor required to produce an item to commercial firms using able-bodied labor, so long as 75% of the remaining portion of direct labor under the contract was performed by blind or handicapped labor employed in the workshop. Thus, as currently worded, the 75% test could be interpreted to pertain only to work retained in the workshop. The intent to "channel the work to legitimate beneficiaries" might also be evaded by the purchase of assemblies and subassemblies as "supplies," which in standard industrial practice would ordinarily be part of the manufacturing or assembly process.

To cure these defects, the bill should explicitly provide that at least 75% of the direct labor required for manufacture and assembly of each commodity produced and service provided pursuant to the contract, including any direct labor performed by subcontractors, is performed by handicapped or blind individuals. Moreover, workshops bidding on small business set-asides should be required to demonstrate their ability to meet such a requirement by the time of contract performance.

2. Adoption of S.2147 May Result in the Loss of Handicapped and Blind Jobs.

As noted above, small businesses are required to hire and promote the handicapped, and many also subcontract work to

workshops, hospitals, and rehabilitation clinics. S.2147 does not require consideration of whether the award of a contract would result in the loss of such jobs for the blind and handicapped. As an example, consider a matter that recently confronted the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. In 1984 the Committee for Purchase proposed to remove from competitive procurement and to assign to a workshop exclusive production of the folding litter support, a battlefield medical care item previously produced by Brenner Metal Products of Wallington, New Jersey. Brenner employed five profoundly deaf assembly line workers and one profoundly deaf supervisor in the production of the item. All these jobs would have been lost had the item been removed from commercial procurement. On the other hand, Committee records disclosed that only one blind or handicapped job would have been created if the proposal were adopted. Under the Administrative Procedure Act notice and comment procedures required by the Javits-Wagner-O'Day Act, we were able to bring this significant fact to the Committee's attention before any final action was taken. Faced with this and other arguments in opposition, the proposal was withdrawn. In its current form, S.2147 provides no protection for the handicapped and blind workers of small businesses and their subcontractors.

3. By Allowing Workshops to Circumvent the Procedures now Required Under the Javits-Wagner-O'Day Act, S.2147 Would Result in the Elimination of Competition, Higher Prices to the Government, and Unfairness to Small For-Profit Businesses.

There is a strong likelihood, if not outright certainty, that workshops awarded competitive procurements under S.2147 will request the Committee for Purchase from the Blind and Other Severely Handicapped to assign to them all future government business for those items on an exclusive non-competitive basis under the Javits-Wagner-O'Day Act. In deciding whether to make such an exclusive assignment under its operating regulations, the Committee for Purchase must find that doing so will not have a serious adverse impact on the current or most recent contractor only. Thus, when a workshop becomes the current or most recent contractor by virtue of a competitive award, the Committee need no longer consider the adverse economic impact on the for-profit small business which was displaced.

It makes simple economic sense for workshops to convert small business set-aside contracts to exclusive assignments under the Javits-Wagner-O'Day Act:

- Once an item is assigned to a workshop under the Javits-Wagner-O'Day Act, the workshop is protected from any future competition.

- The price then set for the item then will be the greater of 5% above the most recent competitive award price paid by the government or the median of competitive bids within 35% above the most recent award price.

- That increased price will then be adjusted to reflect industry indexes twice again each ensuing year.

National Industries for the Severely Handicapped, the central nonprofit agency which acts as a broker, market researcher, and product development service for handicapped workshops under the Javits-Wagner-O'Day Act, explicitly set forth this goal in a July 27, 1982 submission to the Committee for Purchase. Listing its major objectives for fiscal year 1983, NISH's objective No. 9 was, in part, "Convert at least 10 small business set-aside contracts won by Work Centers to JWOD set-asides."

Indeed, the workshops have been successful in converting small business set-asides to exclusive Javits-Wagner-O'Day Act assignments. Trico Opportunity, Inc. of Kingsford, Michigan, for instance, successfully converted its competitive award of wooden boxes in 1983 to a Javits-Wagner-O'Day Act exclusive assignment. Moreover, in the short period between October 13, 1983, and January 12, 1984, Committee for Purchase staff sent what it termed "a number of pricing actions" to the Committee regarding commodities for which the workshop was the current or most recent

contractor and the workshop sought to have the item added to the Procurement List. Another striking example is that of the Chesapeake Center workshop of Easton, Maryland, which by June, 1984, had converted sixteen competitive awards to exclusive Javits-Wagner-O'Day Act Procurement List additions.

Even more alarming, at least one workshop has used competitive awards of small business set-aside contracts and their subsequent conversion to subsidized Javits-Wagner-O'Day Act assignments in order to provide below cost contracts to large businesses. At its June 14, 1984 meeting, the Committee for Purchase considered how it should establish a "fair market price" for items to be added to the Procurement List when a workshop had originally obtained the procurement by competitive bidding and then sought to have the item assigned to it on a permanent non-competitive basis. The question before the Committee was whether the initial fair market price should ever exceed 5% above the previous award. In arguing for a higher price, Mr. Bryan Dotsun, General Manager of Phoenix Industries, Huntsville, Alabama, and representative of the South Region of Work Centers, stated:

> "Profit margins realized by the workshop are better under the Committee's program than for other work. This permits the workshop to subsidize its losing operations in the nongovernmental sector. He said that

> he could not do work for Proctor and Gamble and Parker Pen if he was not able to subsidize those contracts with profits made under the Javits-Wagner-O'Day Act program."

Thus, during the period ending in 1984 when workshops were eligible for small business set-aside awards, that opportunity was used to convert procurements to exclusive contracts, which, in turn, allowed the workshops to supply below cost contracts to commercial sector large businesses. As currently worded, S.2147 would again allow such abuses of the small business set-aside program.

Nonetheless, in his remarks introducing S.2147, Senator Weicker stated that any parallel with the Javits-Wagner-O'Day Act could be distinguished:

> "The comparison is inappropriate. This bill gives workshops the option of competing on an individual bid, or seizing market opportunities as they arise without the arduous and lengthy application process contemplated under Javits-Wagner-O'Day Act. In bidding on an individual job under this bill, a workshop need not commit its resources beyond the time frame of the individual contract, but can jump into the spot market for small business awards. In effect, we are permitting workshops to adjust to economic necessities so that they may keep their workers on the job during lean times."

Cong. Rec., S 2214, March 6, 1986. If that, indeed, is the purpose of the legislation, there should be no objection to a provision prohibiting the assignment of any commodity to a workshop under the Javits-Wagner-O'Day Act while a workshop is the current or most recent contractor for the item by virtue of a small business set-aside award.

4. The Explicit Provisions for Protection of Small Business in S.2147 are Inadequate.

S.2147 fails to provide adequate remedies for injured small businesses. For example, the "economic injury" required before SBA's Administrator can "take actions" to assist a small business must amount to "a reduction in annual sales of 20% or more." This arbitrary standard fails to consider that annual sales are not equivalent to annual income and that government payments on commodity contracts are usually keyed to deliveries, which may take place sporadically over several years; it fails to take into account the harm to the blind and handicapped employees of the displaced for-profit business or its subcontractors that could result from workshop awards; it fails to accord any weight to the plight of contractors who have long standing procurement relationships with the government for their commodities or services and whose businesses may be dependent upon consistent levels of government sales; and it fails to consider other factors beyond the contractor's control such as the state of the

economy, natural disasters, and the effect on the company of past or pending Javits-Wagner-O'Day Act actions. Moreover the current S.2147 formulation provides no consideration for "cumulative" impact so that, given the 20% rule, a company's entire business could be consumed in five different procurements over the life of the program.

Moreover, as currently proposed, S.2147 apparently requires both the Small Business Administrator and the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped to agree on an injury determination before the SBA Administrator can act. That determination ought to be allocated exclusively to the Administrator of the Small Business Administration because of SBA's expertise in the economics of small business. The experience of the Committee for Purchase in gauging economic impact on for-profit businesses in the Javits-Wagner-O'Day Act situation is inapposite here, especially in view of the Committee's "mandate" to increase the number of items produced for the government by workshops.

Further, a meaningful remedial provision ought to require the procuring agency to inform both SBA and all unsuccessful bidders of the basis on which it concluded that a workshop would meet the 75% direct labor standard described above and to set

forth a schedule for audit of the workshop's compliance with the standard during performance of the contract. In addition, there ought to be a rebuttable presumption of injury, requiring the Administrator's intervention, in the following cases: (1) with regard to a commodity, when the contract award results in procurement from a workshop or workshops of more than 25% of any national stock number and, (2) with regard to a service, when the amount of the contract exceeds $85,000. In those cases the Administrator ought to "take appropriate action" unless he could support a decision otherwise by substantial evidence. Also, strict time limits ought to be imposed on challenge and decision, during which time the contract award would not be implemented.

5. Workshops will Submit Predatory Low Bids to Obtain Competitive Awards to Circumvent Javits-Wagner-O'Day Act Procedures.

Workshops are tax exempt, pay less than minimum wage, enjoy public and private subsidies, and can therefore submit predatory low price bids in order to be awarded small business set-aside contracts. Such "buying-in" is unlawful for private firms seeking government contracts, but would be difficult to demonstrate in the case of a workshop. The difficulty arises because, depending upon the method of accounting used by a workshop, it can disguise the direct and indirect subsidies which relieve many of its overhead and fixed costs.

The Committee for Purchase, NISH, and the workshops all realize, however, that it is possible for workshops to be awarded contracts on a competitive basis by "buying-in," with the expectation that they will be able to convert the competitive awards to Javits-Wagner-O'Day Act exclusive assignments, with constant upward adjustment of prices to make up for initial low bids. The resultant effect not only eliminates the consideration of impact on a displaced for-profit contractor, but also establishes the workshop's initial capability to produce the item. The staff of the Committee for Purchase recognized these problems and submitted a proposed solution for consideration by the Committee in its October 14, 1982 meeting. The minutes of that meeting include the following statement by Committee staff:

> "In the past, a number of procuring activities have questioned paying the workshop a higher price for an item being added to the Procurement List than the price the same workshop was receiving as a result of having been awarded a competitive contract for the item. Similarly, procuring activities have questioned using workshop's bids on the competitive procurements of items already on the Procurement List in computing the fair market prices for those items.
>
> * * *
>
> "Under the present policy, the workshop may be accused of submitting an unusually low bid (buying in) with the expectation that the fair market pricing procedures will ensure a higher price which will be acceptable in the long run. Another reason that a workshop might submit an unusually low bid would be to receive the

award thereby eliminating impact on a commercial supplier."

Examples of such abuses were given to the Committee by its Executive Director, Charles W. Fletcher, at the Committee's meeting on October 13, 1983, when Mr. Fletcher identified three specific items where the workshop was a prior contractor and the prices at which the commodities were set by the Committee greatly exceeded the prices at which the workshops won the competitive award for the items

"1. Janitorial at Lewisville - 13.4% above award price

"2. Wiping cloths at Pearl Harbor - 13.9% above award price

"3. Cover, field pack - 21.5% above award price

* * *

"Mr. Fletcher said that the Committee staff has observed a sense of frustration on the part of procuring activities in these and similar cases. He said that, in the procuring activities' view, the workshop has bid-in low and the Committee has bailed it out using the Committee's pricing procedures."

Even one of the workshop's most ardent supporters on the Committee for Purchase, Mr. Mervin J. Flander, a blind citizen, stated his view of this problem at the Committee's March 8, 1984 meeting:

> "[T]he problem arises when a workshop deliberately under-bids, produces for a short time and then proposes to add the item to the Procurement List."

With regard to the workshops' claim that their operating expenses outweigh the advantages they gain from favorable tax and wage laws and charitable contributions, most workshops in the Javits-Wagner-O'Day Act program operate with comfortable operating margins. That is, they make "profits" which, while not distributed to any individual, are used beyond expense outlay. Workshops are ordinarily connected with the social service and training agencies of local communities which provide their "clients" the kind of services they claim are necessary in the workshop itself. A typical workshop is ordinarily a revenue producing subpart of a larger organization or facility which provides rehabilitation or education services. The proceeds from the workshop usually cover its operating expenses, and its "profit" or surplus provides income for the other rehabilitation and training activities of the facility, as well as salaries for workshop management. Indeed, a National Federation of the Blind survey of the 1977 income tax returns of 1/3 of the workshops serviced by the National Industries for the Blind, showed that 70% of those workshops had excess income over expenses - and many of these were very large surpluses. Moreover, I have been advised by the National Federation of the Blind that some workshops have major endowments, such as the New York Lighthouse

for the Blind which had $55 million in its endowment according to its IRS Form 990.

6. **The Impact of S.2147 will not be Distributed Evenly Throughout the $10-15 Billion Per Year Small Business Program, but will be Narrowly Concentrated Among a Few Product Areas.**

The impact of S.2147 will not be felt uniformly or distributed evenly throughout the small business set-aside program, but only in those lines of business where workshops are in direct competition with small businesses, such as in textiles, furniture, medical devices, small assembled wood and metal products, etc. These and other family owned companies which depend upon government procurements in the limited areas where workshops are capable of competing are the particular businesses which will suffer. Many of these companies devote 100% of their operations to federal procurement, and have no commercial business to fall back upon.

The total extent of that area of procurement in which these companies participate is negligible in comparison to the 10 to 15 billion dollars a year estimated to be devoted to the entire small business set-aside program. Moreover, that small share has already been seriously eroded by Javits-Wagner-O'Day Act actions. Exclusive assignments to workshops under the Javits-Wagner-O'Day Act program have grown by about $25,000,000 - $30,000,000 a year.

Last year alone, government procurements under the Javits-Wagner-O'Day Act amounted to more than $267,000,000 -- almost all of which would otherwise have been awarded competitively to small businesses. When considering that workshops are already eligible to bid competitively on other unrestricted federal procurement contracts, the ample amount of government procurements available to workshops appears to obviate the need for S.2147.

In addition, the small business share of government procurement has been further eroded by the Federal PRison Industries ("FPI") Program. 18 U.S.C. §4121-4128. Under that program, a corporation wholly owned by the United States government employs convicts in federal prisons to produce commodities under exclusive non-competitive procurements. Once an item has been added to the FPI "Schedule," a procuring agency can no longer purchase the item commercially. Most of the items now produced by FPI are those which small businesses would ordinarily provide under the small business set-aside program.

Finally, the share of government contract work ultimately awarded to small businesses is dependent upon the "rule of two" -- that is, federal government officers must set-aside for small business any contract expected to generate bids from at least two responsible small businesses offering reasonable prices. The

Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget has recently commenced efforts to weaken the "rule of two." See attached February 21, 1985 OFPP Memorandum. If the OFPP effort succeeds, the overall size of the small business program will shrink generally, and the small business which would face competition from workshops under S.2147 would also face direct competition from large businesses, and potentially from workshops as well.

All these intrusions upon the share of government procurement contracts actually at issue with regard to S.2147 militate against adoption of the bill.

7. Adoption of S.2147 will Perpetuate Inequities for Blind and Handicapped Employees of the Workshops.

Although organized workshop "management" has voiced support for S.2147, there are doubts about whether this bill will actually benefit workshop "labor." The National Federation of the Blind (NFB), however, has spoken out, at least on behalf of blind workshop employees. As the largest blind membership organization in the country, with over 50,000 members, NFB has noted that workshops routinely deny their workers benefits granted to employees of small businesses, such as minimum wage projections. If workshops wish to have the advantages accorded to small business, NFB has argued and we concur, they should be willing to accept the accompanying burdens, especially with

regard to treatment of their labor force. S.2147 does not address the issue of workshops paying minimum wages and treating employees as small businesses are required.

CONCLUSION

In conclusion, the individuals and families whose livelihoods depend on fair and open competition for small business government contracts would be seriously injured by this legislation, while there is no meaningful assurance that more jobs would be created for blind and handicapped workers. In addition, the resulting contract awards to workshops would further erode the extent to which such work is available to small businesses, a competitive market already shrunken by the $267 million in contracts annually assigned to workshops exclusively under the Javits-Wagner-O'Day Act.

While we support the laudable purpose of providing employment opportunities for those otherwise unable to work, it should be kept in mind that small businesses contribute to this end by complying with the Rehabilitation Act, which requires federal government contractors to recruit, hire, and promote the disabled. In addition many small businesses provide work for the handicapped by subcontracting work to workshops, hospitals, and clinics.

It should also be kept in mind that the small business set-aside program was designed to increase opportunities for small businesses to participate in government procurement. Implementing the goal of providing employment for handicapped persons need not and should not obscure that purpose or prejudice that program, as would occur if S.2147 were enacted in its current form.

Barry J. Trilling
Trilling & Kennedy
1900 L Street, N.W., Suite 310
Washington, D.C. 20036
(202) 223-1577

on behalf of:

HLI Lordship Industries, Inc.
30 Davids Drive
Hauppauge, New York 11788

Fraass Survival Systems, Inc.
3830 Boston Road
Bronx, New York 10475

Kilmartin Industries, Inc.
79 Walton Street
Attleboro, Massachusetts 10474

Ace Metal Fabricators
1290 Viek Avenue
Bronx, New York 10474

Arbeka Webbing Company
1135 Roosevelt Avenue
Pawtucket, Rhode Island 02862

Brenner Metal Products Corporation
16 Main Avenue
Wallington, New Jersey 07057

Hialeah Industries, Inc.
890 W. 84th Street
Hialeah, Florida 33014

Jebco, Inc.
P.O. Box 112
Warrenton, Georgia 30828

Ace Spray Furnishing
250 Coster Street
Bronx, New York 10474

Nationwide Glove Company, Inc.
Box K
Harrisburg, Illinois 62946

Auto Skate Company
711 Lehigh Avenue
Union, New Jersey 07083

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY

FEB 21 1986

MEMORANDUM TO: SECRETARY OF DEFENSE
ADMINISTRATOR OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
ADMINISTRATOR OF GENERAL SERVICES

FROM: DAVID F. BAKER, ACTING ADMINISTRATOR

SUBJECT: Small Business Set-Aside Determination Provisions of FAR

The current FAR standard for making a small business set-aside determination is found at FAR 19.502-2. It provides that an agency must set aside a procurement for small businesses "...if the contracting officer determines that there is a reasonable expectation that (a) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns, and (b) awards will be made at reasonable prices."

However, in July 1984, Section 2733 of the Competition in Contracting Act of 1984 (CICA) amended section 16(1) of the OFPP Act to read as follows:

> "... the head of each Executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices:
>
> (1) increase the use of full and open competition in the procurement of property and services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured." (Emphasis added.)

The explanatory statement of the managers of the Conference Report on this amendment stated that:

> "This requirement applies to all agency procurements, including those made under set-aside programs." H.R. Rep. No. 98-861, 98th Cong. 2d Sess. 1984. (Emphasis added.)

Since the Competition in Contracting Act required the receipt of a "sufficient number of sealed bids or competitive proposals ... /to achieve/ the lowest reasonable cost..." as a standard of competition for all procurements "...including those made under set-aside programs," it follows that, when making the original determination to set-aside a particular procurement for small business, the contracting officer must have a reasonable expectation that there will be a sufficient number of small business bids or proposals to fulfill the Government's requirements at the lowest reasonable cost. Therefore, further amendment of the Federal Acquisition Regulation is required to complete the full and proper implementation of the Competition in Contracting Act (CICA) of 1984. Section 2733 expresses a standard of competition for all Federal procurement that has not been directly implemented in the FAR with respect to procurements under the small business set-aside program.

The standard of competition established by CICA applies to a procurement that has been set-aside for small business. Therefore, before any procurement may be set-aside, the contracting officer must have a reasonable expectation that the standard will be met.

The purpose of this letter is to provide notice under the provisions of OFPP Policy Letter 85-1 that within 30 days of the date of this letter the following proposed regulations must be published for a 30 day comment period. This notice has been concurred in by the Director, OMB.

PART 6 — COMPETITION REQUIREMENTS

Subpart 6.1 -- Full and Open Competition

1. Section 6.101, Policy, is amended to add paragraph (c) as follows:

(c) 41 U.S.C. 414 requires the establishment of policies, procedures and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured. This requirement applies to all agency procurements, including those made under set-aside programs.

PART 19 — SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 19.5 — Set-Asides for Small Business

Section 19.501 General

2. Section 19.501 is amended to revise paragraph (g) as follows:

(g) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall be acquired by repetitive set-aside if the contracting officer provides a written determination reaffirming that the original basis for concluding that full and open competition, consistent with the provisions of 41 U.S.C. 414, will apply to each subsequent procurement in that class.

SECTION 19.502 — SETTING ASIDE ACQUISITIONS

3. Section 19.502.2 is amended to read as follows:

19.502-2 Total Set-asides.

The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that full and open competition, consistent with the provisions of 41 U.S.C. 414, will result. The contracting officer's determination must demonstrate that under set-aside conditions, a sufficient number of responsible small business concerns will respond to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost, considering the nature of the property or service acquired. Compliance with the presumption of sufficiency will vary, taking into account the size, character and complexity of each procurement and the pool of prospective bidders. Total set-asides shall not be made unless such a reasonable expectation exists. Although past acquisition history of an item or similar items is important, it is not the only factor to be considered in determining whether a reasonable expectation exists.' In determining that an entire class of acquisitions may be set aside, the contracting officer shall provide a written determination establishing the basis for concluding that full and open competition, consistent with the provisions of 41 U.S.C. 414, can be achieved on each procurement in that class, evaluating in detail the quality, timeliness and cost factors noted above.

Senator WEICKER. Well, I would prefer to have the gentlemen go ahead and make their statements.

Mr. TRILLING. Please, Colin.

STATEMENT OF COLIN O'D. OFFENHARTZ, PRESIDENT, FRAASS SURVIVAL SYSTEMS, INC., BRONX, NY

Mr. OFFENHARTZ. Mr. Chairman, my name is Colin Offenhartz, and I am the president and owner of FRAASS Survival Systems in the Bronx, an economically depressed area, as we all know. It is a family business founded in 1949.

FRAASS manufactures camouflaged bandages and first-aid kits, primarily for the Department of Defense and the General Services Administration; 95 percent of our business emanates from competing successfully on Government contracts.

We recruit the majority of our employees from the unemployment rolls of the State of New York. These people are mostly minority workers with little past training and very few employable skills, who suffer tremendously from a language barrier. Some of them are Eastern European immigrants. We train our employees extensively in machine operations and in hand skills. We are a union shop, currently employ about 150 people, and we have made a commitment to those employees to stay in the Bronx, which is not a very pleasant place to be sometimes.

We have invested very heavily in capital equipment, special capital equipment, to produce these bandages. These are peculiar bandages to the military. There is no commercial marketplace for these items. I have put in about $2 million over the past 12 years in plant, capital equipment, and modernization. The idea behind that is to both produce competitively in the small business arena and to meet surge demands from DOD in a national emergency and other problems; 50 percent of our total sales are centered on four DOD products that we manufacture basically from scratch. Three are field dressing and one is a kit. The people known as NISH have started proceedings with the Committee for Purchase to take those four items and set them aside for perpetuity. If they are successful, the way this program works, I will have been legislated right out of business.

Our opposition to your bill is twofold. The first is a basic problem, that the way you have it set up, you say that there is a severe economic impact when 20 percent of our total sales is affected by some kind of set-aside program. Well, the way that works, sir, if you set aside 19 percent on five items, I am out of business. There is no cumulative way to measure. You either have to lower the threshold or take the cumulative picture into impact. I can't survive. You will force me right out.

The second problem is, I really am concerned that they will use the method of procurement on this system to take the JWOD Program and go for set-asides for perpetuity. It has happened to me before. I lost 1 million dollars' worth of business to Elwyn Industries about 7 or 8 years ago, and I never even knew what the program was. I don't read the Federal Register; it is not my nighttime reading.

I would like to add, I think that if the JWOD Program is broken, and ineffective, and doesn't work for them, then it should be corrected and should be fixed up. It seems as if the methodology of JWOD and how it works doesn't work fast enough, so they are looking for a new car. If this bill goes through as it stands, they are going to get their new car and they are going to have a fast car leading a slow car down the same road. Now we in the small-business community, we don't get another agency if the Small Business Administration doesn't work well enough. We may get it fixed a little bit but we don't get anything new, and I don't see why one group should have an advantage over another group.

I also have a little problem with the information put in the record and what stands in the bill. The record, or the letter of your statement, sir, says that 75 percent of the work produced under any set-aside contract must be performed by the handicapped themselves, but the bill doesn't read that way. I am not a lawyer, but that's not what it says. I have checked with my attorneys, and I can't understand it. I wonder if you would clarify that for me, sir?

Thank you.

[The prepared statement of Mr. Offenhartz follows:]

FRAASS
SURVIVAL SYSTEMS INC

3830 Boston Road
Bronx, New York 10475
(212) 231-5200
TELEX 640734FRAASSNYK

STATEMENT OF COLIN O'D. OFFENHARTZ, PRESIDENT
FRAASS SURVIVAL SYSTEMS, INC.

March 26, 1986
Testimony on S.2147
United States Senate
Committee on Small Business

I am the owner of FRAASS Survival Systems, a small business operating in the economically depressed borough of the Bronx, New York.

FRAASS manufactures bandages and first aid kits for the Department of Defense and the General Services Administration. 95% of our business is a result of successfully competing for Government contracts.

FRAASS recruits the majority of its employees from the unemployment rolls of New York. These people are mostly minority workers, with little past training and few employable skills. We train our employees extensively in machine operations and hand skill tasks. FRAASS is a union shop, currently employing about 150 people, to whom we have made a commitment to stay in the Bronx, providing local employment opportunities.

FRAASS has invested heavily in customized specialty equipment to produce these military peculiar bandages (peculiar because there is no commercial market for them). Over the past 12 years we have invested in excess of $2,000,000 on capital equipment and plant modernization so that we could produce competitively and with the capacity to meet surge demands from DoD.

50% of our total sales is centered on four DoD products that we manufacture. Three are field dressings and one is a kit. National Industries for the Severely Handicapped (NISH) has started proceedings under the Javits-Wagner-O'Day Act (JWOD) with the Committee for Purchase from the Blind and Other Severely Handicapped to have these four set-aside for procurement by workshops for the handicapped for perpetuity. If NISH is successful we will have been driven out of business by government administrative action.

Our opposition to this bill is two-fold.

Firstly, one of the clauses in S.2147 states that if an item's loss to the current for-profit producer may cause severe economic injury, then a review is in order by the SBA and the

economic injury, then a review is in order by the SBA and the director of the Committee for Purchase. That review is very important. However, your legislation has set an unrealistic impact level at 20% or more of annual sales. There is no provision for the CUMULATIVE IMPACT on the producing for-profit business. Under your plan, the Committee could take all four of FRAASS' items since none exceeds 20% of our annual sales. We ask that you reconsider the individual percentage or take the cumulative effect into consideration.

Secondly, we are concerned that workshops will take your new legislation as a method of "buying-in" on new procurements. The workshop could bid a very low price, take a loss, demonstrate its capacity to perform, and then ask for a JWOD set-aside. As we all know, that set-aside program is for perpetuity.

We oppose these parts of your bill.

We would like to add that if JWOD is broken and ineffective as a method to facilitate the workshops in these markets then it should be corrected. The workshops have a vehicle in place, but they seem to find that its motor runs too slowly for their roads, so they want a faster vehicle - your bill - which sidesteps the JWOD Committee method.

Why create a newer vehicle while leaving the first one on the road as well?

In small business we do not require a small business advocate and a smaller business advocate. We have but one vehicle - the Small Business Administration, and when it begins to get sluggish in its performance, we appeal to our elected representatives and ask that more torque be added.

We do not get a new car. We might get a better transmission.

The workshops are getting a new car to lead the old car down the same road.

That situation is grossly unfair.

Thank you for your time and consideration.

Colin O'D. Offenhartz
President

STATEMENT OF WILLIAM J. McALLISTER, PRESIDENT, HLI LORDSHIP INDUSTRIES, HAUPPAUGE, LONG ISLAND, NY

Mr. MCALLISTER. I am William J. McAllister, president of Lordship Industries. We have our factory located in Hauppauge, Long Island. We now employ 70 people, down from 100. This reduction is due primarily to set-asides that occurred over the last 2 or 3 years on the Javits-Wagner-O'Day Act.

I have just one real major concern here. It has been mentioned several times before, but in your bill, if you allow workshops to bid and then allow them to have an exclusive Javits-Wagner-O'Day Act, set-aside I can honestly say that Lordship Industries' goose will be cooked within 5 years. We have been hit very, very hard. We are in a very, very limited market. The entire purchase for military decorations and ribbons for 1 whole year may be $10 million. They have already set aside $1.4 million of those purchases for Elwyn Industries.

There isn't any control in your bill on conversion of contracts to Javits-Wagner-O'Day Act set-asides. I don't mind bidding against Elwyn, I will bid against any handicapped place all day long. They are good guys. They are the same as anybody else coming down the street, but if they have that superadvantage on me, that they can convert that contract, they are going to put us out of business. We all have to be foolish to think that they won't try to convert their contracts. They will, because I would do it if I were in their shoes. There is no doubt in my mind.

We are a very specialized firm. We only make medals, insignias, and ribbons. I have been doing it for 30 years. I have brought three children into that firm, and I am really worried. Every year our volume has gone down, down, down. At one point we employed 400 people at Kings Park Psychiatric Center. As of last week it has been cut to 50. This is a direct result of the $1.4 million that was set aside against us. I don't know how many blows we can take—and we will continue to fight—and I certainly can't reorganize Lordship in a 2- or 3-year period and try to get into another business. I don't think I should have to. I have spent my life doing this, and we come off as a darn good contractor for the defense personnel support center down in Philadelphia. We meet their needs. We are there when they need us.

So, basically, that is my concern. I feel strongly that you should add a nonconversion clause in this, because this is the only safety valve that I will have, and give me a chance to continue this business and perhaps seek another outlet some other day.

Thank you.

[The prepared statement of Mr. McAllister follows:]

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
MARCH 26, 1986 HEARING ON S. 2147

STATEMENT OF WILLIAM J. McALLISTER

My name is William J. McAllister. I am the President of HLI Lordship Industries, a small business located on Long Island, in Hauppauge, New York. Lordship manufactures military medals and decorations for sale to the government. For twenty five years, the sale of medals, insignia and other decorations has been the backbone of our business and currently 95% of our business is with the Federal Government.

Our company now employs approximately 70 people. We previously employed over 100 persons before we lost a substantial amount of business to a sheltered workshop under the Javits-Wagner-O'Day Act.

In 1983 and 1984, our company was required to fight a war on two fronts against a large, well financed sheltered workshop located outside Philadelphia. At that time, the workshop had an endowment almost twice the size of our total gross sales. On one front, the workshop submitted bids for six government contracts which were so low that they would result in a net loss of income if submitted by a tax paying, for-profit firm. As a result, some of our business was lost to the workshop under section 15(c) of the Small Business Act, when it authorized sheltered workshops to bid for small business set-aside contracts.

On the other front, the same workshop applied to the Committee for Purchase from the Blind and Other Severely Handicapped for designation as the sole producer of seven other military medals. In January 1984, the Committee for Purchase added those items to its Procurement List, thereby allocating that business to the workshop on a permanent basis. Lordship appealed that decision to a federal district court and the battle is now continuing in the Fourth Circuit Court of Appeals. However, while those appeals take their course, the workshop has been awarded multi-year contracts totaling in excess of $1.4 million under the Committee's action. In comparison, Lordship's total gross sales for the fiscal year ending March 31, 1985, were $4.2 million.

By any reasonable standard, the impact on Lordship of these lost opportunities to bid has been severe. However, if S.2147 is enacted in its present form, it will authorize even deeper incursions into our businesses, because of the way it would operate in conjunction with the Javits-Wagner-O'Day Act program.

The current bill, S.2147, would appear to authorize a sheltered workshop to take up to 20% of Lordship's business by submitting predatory bids which no tax paying firm could match. Although some may call this procedure "competitive," to us it

seems basically unfair. Lordship enjoys no tax exemptions, receives no government subsidies, and pays more than minimum wage. Moreover, once an item is lost to a sheltered workshop through "competition," the workshop may then ask the Committee for Purchase to assign all future contracts for that item to the workshop. For example, the six contracts which we lost to a workshop in bidding in 1983 became the subject of a proposal for permanent allocation to the workshop the following year.. Although the Committee for Purchase purports to consider the impact of its actions on for-profit businesses, it limits its concern to the current or most recent contractor, in this case the workshop itself. Thus by submitting a predatory bid which our firm cannot match, the workshop sets in motion a process which almost inevitably will lead to an award of all future contracts for that item to the workshop. Moreover, under S.2147 as currently drafted, the workshop could seek another 20% of Lordship's business the following year.

It has been suggested that the impact of S.2147 on small businesses will not be severe because only a small portion of the total small business set-aside program may be affected. My company, like most small businesses, does not participate in all lines of business under the small business set-aside program. Our efforts are concentrated in certain lines of business, just

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as the activities of sheltered workshops have concentrated in certain product lines and areas of business. If Lordship's limited market is drastically reduced due to "competition" from tax-exempt, subsidized workshops, it will provide little comfort to our laid-off employees to know that other small businesses, engaged in other lines of business, have not been affected.

Perhaps the most disturbing aspect of our loss of business to a sheltered workshop is that, although Lordship's business is jeopardized, handicapped workers receive relatively little benefit from the business allocated to the workshop. Although Lordship performs a full line of manufacturing operations in producing a medal, the workshop taking our business subcontracts most of those operations to a commercial firm which does not employ handicapped persons. Only assembly operations are actually performed by handicapped persons. As a result, only a small percentage of the federal procurement dollars allocated to purchasing the item are paid to handicapped workers. For example, the Marine Corps Good Conduct Medal was added to the Procurement List in January, 1984, at a price of $1.67 per medal. However, the cost breakdown submitted by the workshop and the National Industries for the Severely Handicapped projected that handicapped workers would receive only 16.1 cents per medal, less than 10% of the price paid by the government. In contrast, the

subcontractor would receive 60 cents, or 36%, of the federal dollars allocated to purchasing those medals. In short, allocating this business to a sheltered workshop has done more to create jobs for able-bodied employees of subcontractors than for handicapped persons.

In addition, allocating business to a sheltered workshop has resulted, in our case, in a reduction of the employment opportunities Lordship provides for handicapped persons. For several years, Lordship has subcontracted packaging and assembly operations to institutions which provide employment for handicapped and disabled persons. Since we moved to Long Island, our principal subcontractor has been Kings Park Psychiatric Hospital, which is operated by the New York State Office of Mental Health. At one point, Lordship provided part time employment for as many as 400 patients at Kings Park. At the time of the proposed addition of certain medals to the Procurement List in 1983, Lordship provided part time employment for 190 patients. Since that time, however, our volume has decreased, in large part due to the loss of business resulting from the decision of the Committee for Purchase. As a result, there is less work to be performed on an overall basis. In addition, however, Lordship has been required to perform in-house certain operations which were previously subcontracted, so as to

avoid laying off unionized employees. As a result, Lordship now provides employment for only 50 patients at Kings Park. In short, the allocation of government contracts for medals to a sheltered workshop has created relatively few job opportunities for handicapped persons in the workshop, and those increased job opportunities have been offset by reductions in handicapped employment at Kings Park Psychiatric Hospital.

Under these circumstances, it seems especially unjustifiable for Lordship to lose business to a sheltered workshop. Frankly, we don't like losing business to anybody. But if we have to lose business, the beneficiaries should be handicapped persons, not commercial subcontractors.

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STATEMENT OF J. ELIOTT BARROW, PRESIDENT, JEBCO, INC., WARRENTON, GA

Mr. BARROW. Mr. Chairman, I am Eliott Barrow from Warrenton, GA. I am president of Jebco. Warrenton is a rural community with about 2,000 to 3,000 people in it. Warren County has a population of around 6,500. The population is about 50 to 60 to 70 percent black, somewhere in that zone. I have a plant there that has 180,000 square feet. It hasn't grown any in 10 years. We didn't know why it hadn't grown until very recently. We didn't know there was such a thing as a sheltered workshop until last November, and didn't realize their impact on us until very recently.

Now I am up here to talk about people—the blind people, the crippled people, and the disadvantaged people. I hire disadvantaged blacks, 65 percent, and they are dirt poor, sir, dirt poor. They are perfectly willing to work. There are plenty of them available, but I have not been allowed to expand my business for the last 10 years, and I didn't know why. When this came up, I made a little study to see what effect these various programs have had on Jebco.

Now 10 years ago we had available to us furniture items that were set aside for small business by GSA, items that we could produce and have produced in most cases, of some $27 million annually. Now 50 percent of that or some $13 million of it has been set aside for the Federal Prison Industries over the last 10 years. 10.46 percent, or some $2.8 million, is set aside for handicapped workshops. Handicapped workshops also have requested another 12.51 percent under the JWOD. Thirteen percent has been obsoleted and no longer bought, so what we have left for Jebco and all our competitors to bid on is about $3.5 million, which represents 13 percent of the total.

I listened to these gentlemen talk about 5 percent, but I'm talking about my case and my people, and I am alarmed about it because I wasn't aware of where it was going. I'm sure you have nothing to do with the Federal Prison Industries, but the whole system is faulty. This should not happen. I think before we start thinking about new legislation, we should go back and try to correct the faults and find out who we are hurting. If you are interested in people, as I am, then we should do that. If I was in your position, sir, then I would be running some study to see how these various programs in total are affecting people before I started another program.

That's all I have to say, sir. Thank you.

[The prepared statement of Mr. Barrow follows:]

STATEMENT OF J. ELIOTT BARROW TO BE PRESENTED BEFORE THE COMMITTEE ON SMALL BUSINESS OF THE UNITED STATES SENATE REGARDING PROPOSED LEGISLATION TO PERMIT TAX-EXEMPT ENTITIES TO COMPETE AGAINST SMALL BUSINESSES FOR GOVERNMENT CONTRACTS, AND RELATED MATTERS. MARCH 26, 1986. WASHINGTON, D.C.

My name is Eliott Barrow and I am President of Jebco, Inc., a small business located in Warrenton, Georgia. I appreciate this opportunity to offer my comments with respect to S. 2147, which would restore to tax-exempt facilities employing blind or handicapped individuals the opportunity to compete for government contracts otherwise set aside for small businesses under section 15(c) of the Small Business Act. I oppose this legislation.

I have a number of comments with respect to specific provisions and deficiencies of S. 2147, which are summarized later in my testimony. However, my basic opposition arises from my view that this legislation is being considered with insufficient attention being paid to other existing programs which already are impacting adversely on small businesses. I am certain that each one of these programs -- like S. 2147 -- is designed with the best of intentions to serve a legitimate government purpose. However, in concert, these programs are devastating to various small taxpaying businesses and their employees. I believe the problems with these existing programs should be addressed before we start talking about the creation a new program.

I would like to explain a little bit about Jebco and our personal experiences under these programs so you can understand why we are as concerned as we are.

Jebco, Inc.

Jebco is a contract manufacturer of metal office furniture and equipment principally for sale to the General Services Administration, the Department of Defense and the U.S. Postal Service. Jebco is located in Warren County, Georgia, which has been designated as a labor surplus area by the U.S. Department of Labor. Jebco currently has 195 employees, 65% of whom are minorities. It employs some physically handicapped individuals and others over the age of 65. Jebco is one of the few industrial employers in the surrounding 5-county area. It is a small business under any definition of the term, including the operative SBA definition for its industry classification (fewer than 500 employees).

Over the years, Jebco has produced, pursuant to competitively awarded contracts, a number of items of metal office furniture, including the following:

NSN[1/]	Description
7110-00-113-0507	Table 30 x 60
7110-00-113-0509	Table 30 x 60
7110-00-143-0822	Table 34 x 60
7195-262-6647	Costumer
7195-262-6646	Costumer
7520-00-232-6817	Desk, Tray
7520-00-139-4851	Desk, Tray
7110-00-149-1621	Bookcase
7110-00-601-9823	Bookcase
7110-00-113-0448	Steel Table
7110-00-113-0454	Steel Table
7110-00-113-2044	Steel Table
7110-00-149-2045	Steel Table
7110-01-135-1997	Bookcase

Jebco has competed, although unsuccessfully, against other taxpaying businesses for other items of metal office furniture, including the following:

NSN	Description
7125-00-550-7024	Locker
7125-00-530-1938	Locker
7125-00-267-7176	Locker
7125-00-282-5076	Locker
7125-00-680-2764	Locker
7125-00-530-7123	Locker
7125-00-543-7124	Locker
7125-00-269-8476	Locker
7125-00-634-0542	Locker
7125-00-530-3490	Locker
7125-00-543-7125	Locker
7125-00-753-6238	Locker
7105-00-269-9217	Locker

[1/] National Stock Number

Jebco is currently producing, pursuant to competitively awarded contract, the following items:

NSN	Description
7110-00-601-9821	Bookcase
7110-00-601-9822	Bookcase

This contract, which expires in October, 1986, presently constitutes approximately 40% of Jebco's total revenues, with Item 9821 comprising 15% and Item 9822 comprising 25%.

The JWOD Program.

Recently, it came to Jebco's attention that the Committee for Purchase from the Blind and Other Severely Handicapped (the "Committee") was preparing, pursuant to the Javits-Wagner-O'Day Act (JWOD), to withdraw from the competitive procurement system, and to award to a manufacturing facility owned by the State of Tennessee and operated by the Knox County Association for Retarded Citizens, Knoxville, Tennessee, the contract to supply all future government requirements for Item No. 9821. As noted, Jebco is the current supplier of this item to the GSA, having successfully competed for and procured the contract. Over the last twelve month period, this item alone has accounted for approximately 15% of Jebco's total sales. On investigation, Jebco learned that the same Knox County manufacturing facility had commenced steps to remove from competitive procurement Item No. 9822 and Item No. 1997. As noted, Jebco has the current contract for Item 9822, and in the most recent twelve months, Item No. 9822 has accounted for approximately 25% of Jebco's total sales. Jebco has produced Item No. 1997 in the past, but was not the successful bidder in the most recent procurement.

On further investigation, Jebco learned that the same Knox County manufacturing facility is currently the sole supplier to GSA of two metal bookcases, Item No. 1621 and Item No. 9823. As noted, Jebco used to bid, and has successfully won, the contract for these items in the past. Since these items have not been on the GSA procurement list for several years, Jebco has been under the impression that these items were simply no longer being acquired by GSA. However, it now appears that these items are being acquired by GSA, but, pursuant to the JWOD are purchased solely from the Knox County manufacturing facility.

To summarize, Jebco learned that the Knox County manufacturing facility (1) is now the sole supplier to the government of two bookcases that Jebco used to compete for; (2) was attempting to be the sole supplier of another bookcase which Jebco has competed for and produced in the past; and (3) was attempting to be the sole supplier of two other bookcases which currently account for 40% of Jebco's sales.

On the most recent GSA procurement list for metal office furniture, seventy-nine items are listed. Total volume is probably in the eighty million dollar range. Of these items, fourteen items constituted small business set asides, i.e., items set aside for procurement from small taxpaying businesses under Section 15(c) of the Small Business Act. Estimated sales of these fourteen items is approximately twelve million dollars. The Knox County manufacturing facility was taking steps to obtain sole supply contracts for Item Nos. 9821, 9822 and 1997, which aggregate over 40% of the total small business set aside of metal office furniture from the current GSA procurement list. In other words, from the current list of set asides of metal office furniture for taxpaying small businesses all over our Country, the Knox County facility was attempting to become the sole supplier of items constituting over 40% of the total.

In part due to Jebco's opposition, the action with respect to the 9821 and the 9822 has been delayed. However, we fully anticipate the Knox County facility will try again, and we are deeply concerned.

Jebco also has learned that the following items are now produced solely by other tax-exempt manufacturing facilities which obtained the contracts under the auspices of the JWOD: Item Nos. 0448, 0454, 2044, 2045, 2046, and 2047, all constituting various types of contemporary steel tables. Jebco used to compete for and produce Item Nos. 0448, 0454, 2044 and 2045, but they disappeared from the competitive procurement list several years ago. Again, Jebco was under the impression that these items simply were no longer being procured by GSA. It has now learned that they are being procured, but are being procured only from tax-exempt manufacturing facilities under the JWOD.

We understand that the JWOD program has grown from some 12 million dollars in the early 1970's to approximately 300 million dollars today, and that it is growing at a rate of some 25 million dollars per year. From our brief analysis of the matter to date, it would appear that

at least in the area of metal office furniture, a substantial portion of this volume is derived from items historically produced by small businesses.

The Committee is composed of fifteen members: eleven representing federal agencies and four representing the interests of the blind or the handicapped. There are no representatives of the private, taxpaying sector and no representatives of small business. The notice provisions regarding Committee action are inadequate to ensure that affected parties have an opportunity to be heard in a timely fashion. In other words, there is no structure in place to ensure that competing policy concerns -- and, from Jebco's particular standpoint, small business concerns -- are properly considered.

Perhaps a few specific examples from Jebco's recent experience with the JWOD will be informative in this regard.

1. In the past, bookcase Item 9821 has been purchased by GSA together with its companion bookcase Item 9822, which differs from it only in color. By purchasing these separate stock numbers together, the GSA has enabled contractors to achieve economies of scale in both manufacturing and shipping costs. As a result, the savings can be passed along to the government in the form of more competitive bids. The Knox County proposal would have authorized it to manufacture bookcase Item 9821 upon award, while Item 9822 would be purchased separately. In other words, the Knox County facility requested, and GSA agreed to waive for purposes of Item 9821, the requirement for procurement in the aggregate. The result of this would have been twofold: first, the cost of both items to the government could only increase because of lost economies and the Committee's pricing structure; and second, Jebco would be placed in a most unfair position. Item 9821 accounts for 15% of Jebco's current sales; Item 9822 accounts for 25% of its current sales. By splitting the procurement and going after the two Items separately, the Knox County facility could first argue that Jebco was only impacted to the extent of 15% of its sales. Once it had Item 9821, it could then argue that Item 9822 only accounted for 25% of Jebco's sales. The GSA's original decision not to require "purchase in the aggregate" was reversed, we believe, due to Jebco's focusing attention on it. However, we question whether the decision would have been made in the first place were the interests of the decision makers more balanced; in other words, if membership on the Committee included representatives of small business as well as representatives at the government, the blind and the handicapped.

2. The JWOD defines "severely handicapped" as ". . . individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Government and taking into account the views of non-Government entities representing the handicapped) constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment." 41 U.S.C. § 48(b)(2).

In documents presented on behalf of the Knox County manufacturing facility, which Jebco obtained under the Freedom of Information Act, the following representations are made:

> Capability: The workshop has complete metal fabricating and painting capability. They currently produce bookcases for GSA that are on the PL.
>
> Description of work: Sheet metal components are shaped and welded to form back, sides and bottom of case. Pilasters are welded to sides for adjustment shelves. Case is degreased and painted. Legs are welded to plates and bolted to bottom. Laminated top is attached. All loose parts are protected by shrink-wrap and secured in corrugated box, labeled and sealed for shipment.

The documents further represent that over 95% of all work is performed by severely handicapped individuals.

The representations as to capability and description of work are precisely those that would be applicable to virtually any commercial, tax-paying metal fabricating company. We questioned how it could be said that the employees of the Knox County manufacturing facility were unable to currently engage in normal competitive employment when it was represented that they performed virtually every single function that a taxpaying facility would perform. We were denied the opportunity to visit the facility and determine for ourselves the exact nature of the operation.

3. Congress, the Department of Labor, the National Labor Relations Board, and other authorities have allowed substandard labor protection for blind and handicapped workers on the premise that the tax-exempt facilities

which employ the handicapped are providing "rehabilitation and therapeutic treatment" rather than ordinary employment. However, it would appear that the working conditions of this "therapeutic treatment" are very similar to conditions in normal taxpaying industrial operations. The principal difference is that the blind and handicapped workers (while often doing essentially the same type, quantity, and quality of work) typically are paid extremely low wages.

For example, in the action on Item 9821, it was represented that the handicapped workers at the Knoxville facility were 70% as productive as regular workers and would be paid approximately $3.96/hour. A wage survey for Knoxville and Knox County published by the Tennessee Department of Economics and Community Development as of January 1984, reflects the following average wages: brake operator, sheet metal - $8.16; sheet metal worker, production - $10.50; welders and flame cutters, production - $6.59; and machine operator, general metal - $6.75. Assuming 70% productivity, it would appear that considerably higher wages should be paid to the workers at the Knoxville facility.

4. Actual notice of the Committee's proposals to remove items from competitive procurement should be given to all known suppliers of the item in question. A one-time publication of a short statement in the Federal Register is the only current requirement. Like most small businesses, Jebco does not have the staff or resources to monitor all Federal Register publications by government agencies that may effect its business. What we found particularly disturbing in the proceeding on Item 9821 was that Jebco was specifically identified months ago as the company primarily affected by the proposal, yet no actual notice by the Committee was even attempted, much less given. Investigation will probably reflect that in many Committee actions no competing concerns have been raised because the affected parties have had no knowledge of the action.

5. Under the JWOD, the Committee appears to have extremely broad discretion in determining which items are to be removed from the normal competitive system and placed on the special list. The basic standard is whether, in the Committee's discretion, a particular item is "suitable" for placement on the special list. In making this "suitability" determination, the Committee's regulations indicate that one factor for consideration is whether the addition of the particular item in question will have a serious adverse impact on the current or most recent contractor for the particular item. 41 C.F.R. § 51-26. There is no stated requirement that the cumulative impact

of decisions to remove numerous items be considered. Yet it is this cumulative impact which places Jebco's future in jeopardy, and indeed, places in jeopardy other small businesses which manufacture metal office furniture.

Jebco has no "permanent" government contracts. It must compete on an ongoing basis with other suppliers, large and small, for government contracts. On any given item at any given time, Jebco may not be the low bidder and may not have the contract. If the Committee made a determination on such item at such time, Jebco apparently would have no standing to even object, although it may have produced the item in the past and would intend to bid on the item in the future. As more and more items are removed from competitive procurement, there obviously is less to bid on. Jebco has already identified a number of items removed from competitive procurement without its knowledge. Now it finds a number of additional items under consideration. It is a small wonder that we are deeply concerned over this program and its administration.

Federal Prison Industries

Federal Prison Industries, Inc. is a wholly-owned government corporation organized to provide training and employment opportunities for federal prisoners. Like the Committee, it removes items from competitive procurement for production pursuant to exclusive contract at substandard wages. Unlike the Committee, it is governed by a Board of Directors including representatives of industry, labor, agriculture, retailers and consumers, the Secretary of Defense and the Attorney General. Its bylaws specifically provide that it shall ". . . so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor."

Interestingly, it has a priority over the blind or the handicapped. In other words, it can veto a request by blind or handicapped facilities for any given government contract.

As noted previously, Jebco used to compete for and often won Items Nos. 0507, 0509, 0822, 6647, 6646, 6817 and 4851. Now all of these items are produced by Federal Prison Industries under permanent and exclusive contracts. Jebco used to compete for the entire list of lockers noted previously, although it was an unsuccessful bidder. Now, every one of these items is produced by Federal Prison Industries under permanent and exclusive contracts.

Although FPI appears to have a more balanced administrative and decision-making structure than the Committee, the effect of its actions on Jebco is the same: thousands of dollars of items that used to be available for competitive procurement have been removed from the system.

Summary of Impact of JWOD and FPI on Jebco.

Attached to this statement as Exhibit 1 is a ten-year analysis of Jebco's sales of GSA items previously set aside for small businesses. Jebco was unable to obtain current data on all items as to volume of government purchases and accordingly used last known volumes in many cases. Due to inflation, if nothing else, we believe the effect of this is only to understate the volume of government purchases from tax-exempt entities. The analysis reflects that of the total volume of GSA small business set-aside items that Jebco has historically competed for, some 70 percent has either been removed from competitive procurement and awarded to tax-exempt facilities or is being sought by tax-exempt facilities for removal.

The cumulative impact on Jebco of these various programs has been considerable. Jebco's current employment is approximately one-half of what it was just a few years ago. Scores of items that Jebco used to compete for have been removed from competition. Like its small business competitors, it now finds itself bidding for fewer and fewer items, and is concerned that no one in government is monitoring or indeed even aware of the cumulative impact of these programs. If the impact of these programs were spread out among all taxpaying businesses, or even among all taxpaying businesses which deal with the government, the impact might be minimal. However, the impact is not spread out. It is focused on small businesses and particularly those like Jebco, which provide entry level industrial employment and are fairly labor intensive.

Section 15(c) of the Small Business Act.

Section 15(c) of the Small Business Act authorizes federal procurement officers to set aside a federal contract for exclusive bidding by small businesses if the contract is expected to generate bids from "at least two responsible small businesses offering reasonable prices." Under S. 2147, the Section 15(c) program would be amended to permit tax-exempt facilities employing blind and handicapped individuals to compete against small businesses. As an initial matter, we note that there is presently pending an OMB initiative to change the criteria for small business set-asides. The new criteria, when

implemented, will significantly reduce the volume of small business set-asides from their current levels. Thus, OMB is acting to further reduce the small business set-aside program at the very time that legislation is being considered which would hinder small businesses in competing. In our view, this Committee should be addressing the OMB proposal before considering legislation which would further reduce the ability of small businesses to compete.

We have the following specific comments with respect to S. 2147.

The last Congress passed bills to amend section 15(c) without the voice of small business government contractors. It happened so quickly that small businesses were unable to respond, and even today, many small businesses undoubtedly are unaware that this legislation is pending.

Workshops pay no taxes, pay less than minimum wage, and enjoy public and private subsidies. Accordingly, they can submit predatory low price bids in order to be awarded small business set-aside contracts. We question how any tax paying small business would be able to compete with a tax-exempt facility paying substandard wages.

The Javits-Wagner-O'Day Act exists to serve the tax-exempt facilities exclusively and it is more than adequate to provide them with government business. If anything, the JWOD program needs to be reformed to protect the interests of taxpayers and small business.

Jobs for the blind and handicapped will not necessarily be created, and in fact may be lost by amending section 15(c) as proposed. The amendment will not ensure increased job opportunities for blind and handicapped workers, but in its proposed form, will encourage subcontracting.

The impact of the amendment will not be felt throughout the small business set-aside program, but only in those lines of business where workshop efforts are concentrated, such as metal office furniture. The businesses typically are fairly labor intensive and provide entry-level industrial employment.

Amending section 15(c) as currently proposed would undermine full and open competition without any demonstrated benefit to handicapped workers.

Allowing awards to the tax-exempt facilities will enable them to convert their contracts to exclusive, permanent JWOD assignments without having to meet the minimal requirements of that program.

CONCLUSION.

Like all good citizens, Jebco generally supports a policy of helping those less fortunate. However, such policy must be implemented with common sense and reason; with due regard to the costs to taxpayers as well as the costs to those specifically impacted by preferential treatment for others; and with due regard to other legitimate policy concerns, such as insuring that the benefits of programs actually go to the intended beneficiaries, encouraging minority employment, encouraging employment opportunities in labor surplus areas, encouraging small businesses and encouraging full and open competition. We are concerned that at least in the area of procurement of metal office furniture, these programs are not being implemented with the aforementioned concerns in mind. None of these programs can be considered in a vacuum. All must be considered together, and serious Congressional oversight of the entire area is warranted.

Both the General Accounting Office (GAO) and the House of Representatives Committee on Government Operations have found that stronger federal efforts are needed to enforce labor standards and to improve the administration of sheltered workshop programs. (See By the Comptroller General Report to the Honorable Barry M. Goldwater, Jr., HRD-81-99, September 28, 1981 and "Improvements Needed in the Administration of the Javits-Wagner-O'Day Act, Seventeenth Report By The Committee on Government Operations together with Supplemental Views", House Report 98-546, November 15, 1983.) Furthermore, the Senate Appropriations Committee has echoed the concerns about low wages and substandard labor protection in sheltered workshops by including specific language and instructions in its report to accompany making appropriations for the Treasury, Postal Service, and General Government Appropriation Bill, 1986", Senate Report 99-133, pp. 43-43). We believe the problems with the existing programs should be considered and addressed before implementation of yet another program.

However, if S. 2147 is going to be pursued, then we believe that tax-exempt workshops desiring to participate in the small business set-aside program should be expected to meet all of the requirements otherwise applicable to taxpaying small businesses. Thus, the legislative provisions to readmit these tax-exempt industries to the Section 15(c) program should allow participation only by workshops which (1) pay realistic wages to blind or handicapped workers; (2) accord to blind or handicapped workers all of the rights and protections available to comparable small businesses pursuant to the National Labor Relations Act; and (3) pay taxes on income derived from

contracts which previously were the subject of competitive procurement.

The point of the approach we are suggesting is to require these facilities to operate as small businesses in the event that they wish to participate in procurement activities.

SPECIFIC RECOMMENDATIONS.

The JWOD Act should be amended in the following particulars:

1. The Office of Advocacy of the Small Business Administration should monitor the Committee's activities, take an advocacy role on behalf of small business, and include in its annual report to the Congress its findings as to the impact of the Committee's actions on small business.

2. Actual notice of the Committee's proposals to remove items from competitive procurement should be given to all known suppliers of the item in question.

3. The Committee should have members representing the interests of the private, taxpaying sector.

4. The items already removed from competitive procurement should be reconsidered with a specific focus on the cumulative impact of their removal on small business.

5. In any pending action, specific consideration of the cumulative impact on small business of prior decisions should be required.

6. All income derived from JWOD contracts should be considered taxable.

7. An opportunity for a hearing before the Committee with a written decision responding to all points should be required.

8. Adverse impact on a small business should be defined as 10% of gross sales.

The proposed legislation to amend the Small Business Act should contain the following protections:

1. Workshops should assure that 75% of direct labor tasks on the entire contract will be performed by

blind or handicapped individuals. Subcontracting to avoid the 75% requirement should be prohibited.

2. Workshops should meet all requirements otherwise applicable to small businesses including (a) size standards, (b) wages to be set at no less than applicable minimum wage, and (c) employees to be accorded the same rights and protections as employees of small businesses, including coverage under the Social Security system.

3. The program should have a three year authorization only.

4. SBA should have the authority to require award of a contract to other than the workshop low bidder in appropriate cases. Criteria for this decision specifically should include consideration of the cumulative impact of all federal programs, including JWOD and FPI.

5. Contracts awarded under section 15(c) should not be subject to conversion to the JWOD Procurement List while the workshop is the current or most recent contractor.

6. The provision should not apply to procurement of items which are already on the Procurement List.

7. All income derived from section 15(c) contract awards to workshops should be considered taxable.

8. A $20,000,000 ceiling should be placed on the program.

9. No more than 10% of an agency's total annual purchase of a particular product should be awarded to workshops.

10. Adverse impact on a small business should be defined as 10% of gross sales.

Thank you for your consideration of my comments.

JEBCO, INC. 10 YEAR SALES ANALYSIS

YEAR	CONSOLIDATED ALL DIVISIONS	MANUFACTURING DIVISION	GSA SALES BY PRODUCT LINE: CO TABLES	SEC S/C	HS S/C	C. TABLES	MAP CASE	CARD FILE	BANK DRAWER	TOTAL GSA ITEMS	OTHER SALES		TOTAL SALES
1975	$5,847,844	$5,555,452	$844,398	$2,626,695	$0	$269,046	$0	$0	$0	$3,740,139	$1,715,313	$100,000	$5,555,452
	% GSA SALES	67.32%	22.58%	70.23%	0.00%	7.19%	0.00%	0.00%	0.00%	100.00%			
	% ALL SALES	100.00%	13.20%	47.28%	0.00%	4.84%	0.00%	0.00%	0.00%	67.32%	30.88%	1.80%	100.00%
1976	$6,672,283	$6,357,764	$765,398	$3,095,747	$0	$0	$861,269	$0	$0	$4,722,410	$1,525,354	$110,000	$6,357,764
	% GSA SALES	74.28%	20.46%	82.77%	0.00%	0.00%	23.03%	0.00%	0.00%				
	% ALL SALES	100.00%	12.04%	48.69%	0.00%	0.00%	13.55%	0.00%	0.00%	74.28%	23.99%	1.73%	100.00%
1977	$5,047,764	$4,795,376	$280,975	$3,092,773	$0	$0	$0	$0	$0	$3,373,748	$1,321,628	$100,000	$4,795,376
	% GSA SALES	70.35%	8.33%	91.67%	0.00%	0.00%	0.00%	0.00%	0.00%				
	% ALL SALES	100.00%	5.86%	64.49%	0.00%	0.00%	0.00%	0.00%	0.00%	70.35%	27.56%	2.09%	100.00%
1978	$6,690,133	$6,343,626	$1,270,424	$0	$1,181,722	$732,391	$646,674	$0	$0	$3,831,211	$2,714,415	$0	$6,343,626
	% GSA SALES	58.53%	33.16%	0.00%	30.84%	19.12%	16.88%	0.00%	0.00%				
	% ALL SALES	100.00%	19.41%	0.00%	18.05%	11.19%	9.88%	0.00%	0.00%	58.53%	41.47%	0.00%	100.00%
1979-(4MO)	$2,081,356	$1,977,288	$1,017,427	$0	$0	$0	$0	$0	$0	$1,017,427	$959,861	$0	$1,977,288
	% GSA SALES	51.46%	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%				
	% ALL SALES	100.00%	51.46%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	51.46%	48.54%	0.00%	100.00%
1980	$8,037,529	$7,639,652	$1,422,369	$1,929,136	$0	$1,924,710	$0	$888,935	$0	$5,369,150	$2,270,502	$0	$7,639,652
	% GSA SALES	70.26%	26.51%	35.93%	0.00%	35.87%	0.00%	1.66%					
	% ALL SALES	100.00%	18.63%	25.26%	0.00%	25.21%	0.00%	1.16%	0.00%	70.26%	29.74%	0.00%	100.00%
1981	$5,805,701	$5,462,250	$0	$155,439	$0	$764,820	$299,818	$0	$0	$1,220,077	$4,242,173	$0	$5,462,250
	% GSA SALES	22.34%	0.00%	12.74%	0.00%	62.69%	24.57%	0.00%	0.00%				
	% ALL SALES	100.00%	0.00%	2.85%	0.00%	14.00%	5.49%	0.00%	0.00%	22.34%	77.66%	0.00%	100.00%
1982	$6,696,988	$6,349,689	$1,244,493	$1,200,000	$0	$0	$0	$527,312	$0	$2,971,805	$3,377,884	$0	$6,349,689
	% GSA SALES	46.80%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%				
	% ALL SALES	100.00%	19.60%	18.90%	0.00%	0.00%	8.30%	0.00%	0.00%	46.80%	53.20%	0.00%	100.00%
1983	$11,307,305	$11,037,629	$820,425	$2,021,876	$500,000	$196,418	$0	$0	$0	$3,538,719	$6,748,906	$750,000	$11,037,629
	% GSA SALES	32.06%	23.18%	57.14%	14.13%	5.55%	0.00%	0.00%	0.00%				
	% ALL SALES	100.00%	7.43%	18.32%	4.53%	1.78%	0.00%	0.00%	0.00%	32.06%	61.14%	6.79%	100.00%
1984	$10,152,830	$9,887,494	$0	$0	$0	$0	$0	$819,024	$1,370,717	$2,189,741	$7,042,042	$655,711	$9,887,494
	% GSA SALES	22.15%	0.00%	0.00%	0.00%	0.00%	0.00%	37.40%	62.60%				
	% ALL SALES	100.00%	0.00%	0.00%	0.00%	0.00%	0.00%	8.28%	13.86%	22.15%	71.22%	6.63%	100.00%
1985	$9,834,999	$9,426,754	$130,000	$0	$420,000	$90,000	$0	$939,152	$0	$1,795,152	$7,631,602	$0	$9,426,754
	% GSA SALES	19.04%	8.36%	0.00%	34.54%	5.01%	0.00%	52.09%	0.00%				
	% ALL SALES	100.00%	1.59%	0.00%	6.58%	0.95%	0.00%	9.92%	0.00%	19.04%	80.96%	0.00%	100.00%
1985 (7MO)	$7,384,796	$7,347,701	$600,000	$0	$2,300,000	$310,000	$0	$0	$0	$3,410,000	$3,937,701	$0	$7,347,701
	% GSA SALES	24.43%	17.60%	0.00%	73.31%	9.09%	0.00%	0.00%	0.00%				
	% GSA SALES	77.93%	8.17%	0.00%	34.02%	4.22%	0.00%	0.00%	0.00%	46.41%	53.59%	0.00%	100.00%
TOTALS	$85,779,827	$82,378,671	$8,415,909	$14,121,666	$4,801,722	$4,287,385	$2,335,069	$1,843,111	$1,370,717	$37,175,586	$43,487,387	$1,715,711	$82,378,671

SMALL BUSINES SET ASIDE ITEMS SHOWING IMPACT HANDICAPPED AND PRISON INDUSTRIES, HAS ON COMPETITIVE BIDS AT GSA

ITEM NAME	NATIONAL STOCK NO	UNITS	VALUE	SEE NOTE ^	UNICOR	BLIND S/HAND SET ASIDE	BLIND S/HAND APPLICATION	SBA SET ASIDE	ITEMS WHICH HAVE DISAPPEARED	JEBCO STATUS MFG/BID
24 X 60 CONTEMPORARY TABLE	0517 0521	3,490	$294,445	(1)	•	•	•	$294,445	•	MFG
24 X 36 CONTEMPORARY TABLE	0595 0633	12,080	$809,360	(1)	•	•	•	$809,360	•	MFG
24 X 60 CONTEMPORARY TABLE PANEL	0798 0816	1,530	$218,121	(1)	•	•	•	$218,121	•	MFG
36 X 72 CONTEMPORARY TABLE	0048 0434	4,580		(2)		•	•	•	•	MFG
35 X84 CONTEMPORARY TABLE	2044 2045	1,820		(2)		•	•	•	•	MFG
54 INCH ROUND CONTEMPORARY TABLE	2046 2047	1,316	$2,149,015	(2)		$2,149,015	•	•	•	BID
30 X 60 CONTEMPORARY TABLE	0507 0509	25,000	$2,625,000	(3)	$2,625,000		•	•	•	MFG
30 X 45 G.O. TABLE	1987	3,690	$127,625	(1)	•	•	•	$127,625	•	MFG
30 X 60 G O TABLE	1988	13,260	$1,259,852	(1)	•	•	•	$1,259,852	•	MFG
24 X 36 G O TABLE	1989	7,610	$525,060	(1)	•	•	•	$525,060	•	MFG
24 X 36 OFF MCH STD	1979	3,690	$265,235	(1)	•	•	•	$265,235	•	MFG
3 SHELF BOOKCASE WOOD TOP	9821 9822	31,990	$2,500,727	(1)	•	•	$2,500,727	•	•	MFG
3 SHELF BOOKCASE STEEL TOP	1997	9,350	$679,657	(1)	•	•	$679,657	•	•	MFG

2 SHELF BOOKCASE STEEL TOP	1998	3,230	$186,398	(1)	•	•	$186,398	•	•	MFG
2 SHELF BOOKCASE WOOD TOP	1621 9823	10,737	$666,462	(2)	•	$666,462	•	•	•	MFG
COSTUMER POLE TYPE	7110-00-262-6647 7110-00-262-6646	10,000	$200,000	(3)	$200,000	•	•	•	•	MFG
34 X 60 G.O. TABLE	7110-00-143-0820	20,000	$1,900,000	(3)	$1,900,000	•	•	•	•	MFG
DESK TRAY	7520-00-232-6817 7520-00-139-4851	40,000	$100,000	(3)	$100,000	•	•	•	•	MFG
LOCKERS VARIOUS TYPES	7125-00-550-7024 7125-00-530-1938 7125-00-267-7176 7125-00-282-3076 7125-00-282-3171 7125-00-680-2764 7125-00-269-8476 7125-00-634-0842 7125-00-282-2061 7125-00-530-3490 7125-00-543-7125 7125-00-753-6238 7125-00-269-9217 7125-00-543-7125	40,000	$5,000,000	(3)	$5,000,000	•	•	•	•	BID
STORAGE CAB	7125-00-641-5436									
WARDROBES	7125-00-634-0848									
VARIOUS TYPES	7125-00-264-4939	25,000	$3,750,000	(3)	$3,750,000	•	•	•	•	BID
BOOKCASE	7110-00-262-6650	45,000	$1,125,000	(3)	•	•	•	•	$1,125,000	MFG
SECTIONAL	7110-00-262-6648	15,000	$345,000		•	•	•	•	$345,000	
STYLE	7110-00-262-6649	3,000	$63,000		•	•	•	•	$63,000	
	7110-00-831-7583 7110-00-831-7430 7110-00-935-3240	40,000	$720,000	(3)	•	•	•	•	$720,000	
	7110-00-004-6741 7110-00-004-6735 7110-00-935-3241	20,000	$340,000	(3)	•	•	•	•	$340,000	
	7110-00-004-6752 7110-00-004-6745 7110-00-935-3242	2,000	$32,000	(3)	•	•	•	•	$32,000	
	7110-00-471-5005									

	7110-00-471-4039							
	7110-00-262-6681	30,000	$500,000 (3)					$500,000
	7110-00-262-6673	35,000	$525,000 (3)					$525,000
TOTALS	NUMBER PCS FURN	478,367	$26,906,957	$13,575,000	$2,815,477	$3,366,782	$3,499,698	$3,650,000
				50.45%	10.46%	12.51%	13.01%	13.57%
			GSA TOTAL SALES	UNICOR SET ASIDE	BLIND S/HAND SET ASIDE	BLIND S/HAND TO BE SET ASIDE	SBA SET ASIDE LEFT FOR SMALL BUSINESS	ITEMS WHICH DISAPPEARED FROM GSA PROCUREMENT WE UNDERSTAND GSA OBSOLETED THESE ITEMS??

JEBCO'S COMPETIVE BID POTENTIAL HAS BEEN REDUCED FROM THIS AMOUNT>>>$26,906,957
TO THIS AMOUNT>>>

Senator WEICKER. I have asked Mr. Tiryakian, the counsel for the committee, to respond to Mr. Offenhartz's comment.

Mr. TIRYAKIAN. The intention in both the Congressional Record statement and the bill is the same, that 75 percent of the man-hours done in the workshop on a contract will be done by the blind or the handicapped. This is a test that is more severe than the test that is currently applied by the Committee for the Purchase under JWOD. We have tried to tighten the ratchet just one more degree, to make it a little more rigorous, and we don't think that there is any ambiguity.

Mr. OFFENHARTZ. There is an ambiguity. I'm sorry, Ed, but the way the bill is written, the way I read it—and I am not a lawyer—you could subcontract out 90 percent of the job any time you wanted to, as long as on the remaining 10 percent, you put handicapped labor to work on 75 percent of that remaining work. That is what the bill says.

Senator Weicker's opening statement is in contrast to that; it does not say that. It says that 75 percent of the work produced under the set-aside contract must be performed by handicapped workers themselves, regardless of where the work is done. The bill says that 75 percent of the work in the workshop has to be produced by handicapped workers; we understand that 25 percent of workshop labor might be nonhandicaped supervisors and that they can do 25 percent of the work, but 75 percent of the work in the workshop must be done by handicapped labor. You are saying and the Senator's letter says 75 percent of the total work, whether or not in the workshop, should be done by handicapped people. There is a heck of a contradiction there.

Senator WEICKER. Well, that's why we are here, you know, if there are comments that can be taken into consideration and weaknesses pointed out in the legislation. We are not here to ram anything down anybody's throat. I am well aware as to the fact that your various corporations serve a clear-cut need of their own, and it is not my desire to set anyone against anyone else, when indeed all need some special assistance. If the legislation can be made better, so be it. I don't have any pride of authorship. Neither am I stuck to what was initially drafted. If that were the case, there would be no point in having a hearing; no point in wasting your time or mine.

Your statements will be read very carefully, and especially in terms of any recommendations that you have to include in the legislation. There will be legislation but, again, it is our purpose to make this as fair as possible to as many people as possible.

I thank you very much.

Mr. TRILLING. Thank you, Senator.

Mr. OFFENHARTZ. Thank you.

Mr. MCALLISTER. Thank you.

Senator WEICKER. The last panel consists of Jim Gashel, director of governmental affairs for the National Federation of the Blind; Dwight Whittaker, executive director of the National Association of Rehabilitation Facilities; and Anthony Young, chairman of the board of Fairfax Opportunities Unlimited of Springfield, VA.

All right, gentlemen. Why don't we proceed? Jim Gashel, why don't you lead off?

STATEMENT OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND

Mr. GASHEL. Thank you very much, Senator. My written statement is submitted, and I will just summarize quickly.

The position of the National Federation of the Blind with respect to S. 2147 is to support needed changes which will provide better opportunities and fair employment practices for blind and handicapped workers in sheltered workshops. Senator, we are going to be offering four recommendations with respect to what we think would be improvements in this bill, principally aimed at avoiding some of the inequities which we believe are in some of the other programs that have been referred to here today, inequities as far as the work force is concerned.

Now what do I mean by inequities? Well, I am not going to give you the whole litany. Here are a few headlines from the front pages of the Wall Street Journal, when they said: "Sheltered Workshops: Pay of Blind Often Trails Minimum Wage at Charity Workrooms." "Sheltered Workshops: How a Blind Worker Gets $1.85 an Hour After 20 Years on Job." "Minimal Wage: Some Workshops Pay Handicapped as Little as 10 Cents an Hour." So said the Wall Street Journal.

Some of those findings were echoed in the report of the Comptroller General, a General Accounting Office report just a couple of years later, in fact 4 years ago, when the General Accounting Office found that stronger Federal efforts are needed to provide employment opportunities and to enforce labor standards in sheltered workshops. Then just a couple of years after that, in fact 3 years ago, the House of Representatives Committee on Government Operations made similar findings in their report called, "Improvements Needed in the Administration of the Javits-Wagner-O'Day Program."

Even last year, the Senate Appropriations Committee found in Senate Report 99-133, which is to accompany the bill making appropriations for Treasury, Postal Service, and general Government, the committee found after assessing responses to questions submitted by you, Senator Weicker, and other Senators, that the workshops were really not making significant efforts to recruit blind and handicapped people particularly into management and supervisory positions, and that is what the Senate report says.

Now the inequities that I am talking about are graphically illustrated in the workshop profile which I have given in my written statement. The specimen or sample workshop for the profile is the State of Connecticut, board of education and services for the blind workshop, and I have charts which will show at least two aspects of this profile. They show really the job and pay differentials which exist in the workshops.

The first chart shows that blind direct labor workers average $1.86 an hour, while sighted direct labor workers average $4.20 per hour. Ninety-three percent of the direct labor workers at the Connecticut workshop are blind or blind and handicapped, but as far as management and supervision goes, only 35 percent of the employees in management and supervision are blind or handicapped; 20 out of 31 of the employees in that category are sighted, without

any handicaps. The chart shows that the pay for those people averages $8.25 per hour, as compared to an average of $5.54 an hour for the blind and handicapped who are in management but, as I said, there are few of those.

Now I have another chart which shows the job and pay percentages in the Connecticut workshop by two major employee groups, blind and sighted employees. Now in this particular chart you see that blind people represent almost 78 percent of the entire work force in the Connecticut workshop but they receive only about 36 percent of the entire pay of the Connecticut workshop. Then the sighted who are not handicapped, by contrast, represent about 22.4 percent of the work force, and that group receives 64 percent of the pay.

So I think the most glaring conclusion that you could draw from these charts is that job status and pay vastly improve for employees who are sighted as opposed to employees who are blind. Top pay, $8.25 an hour, goes to sighted people who don't have handicaps, and bottom pay, $1.86 an hour, goes to blind people who also have handicaps, so that is what the charts show.

Now just a few comments on existing law. Jobs and pay for blind and handicapped people in sheltered workshops are considerably affected by two laws that have been referred to—the Javits-Wagner-O'Day Act and the Fair Labor Standards Act. The Javits-Wagner-O'Day Act has only one employment standard in it, and that is that a workshop qualifies if 75 percent of the direct labor—the direct labor, now—is performed by blind or handicapped workers, but there is no standard in the Javits-Wagner-O'Day Act for blind and handicapped people to be involved in management or supervision. As for pay, the Fair Labor Standards Act allows wages to be as low as 25 percent of the minimum wage, or even lower in some cases.

So the Connecticut workshop profile shows how the combined effect of these laws means that the lowest jobs are provided under the Javits-Wagner-O'Day Act, and those are the direct labor jobs. Those are the piecework jobs, and those too are the jobs which are permitted to be paid less than the minimum wage under the Fair Labor Standards Act.

One comment on collective bargaining, and then my recommendations. The absence of collective bargaining further underscores the substandard labor conditions or requirements which now apply to the sheltered workshops. The National Labor Relations Board, however, has begun to assert jurisdiction over workshops, and the Federal appeals courts in two circuits have supported the board in making these findings.

Now the board's findings to assert jurisdiction in the workshops are persuasive precedents for the conclusion that the workshops are conducting substantial business activity. Therefore, their employees deserve the same labor protections that our laws afford to everyone else who works in American industry. The recommendations, Mr. Chairman, that we offer are based on the principle of providing better work opportunities and fair employment practices for blind and handicapped workers in sheltered workshops, and quickly, they are these.

We are asking for an employment standard that applies to all jobs in the sheltered workshop. The only standard that we find in S. 2147 is the requirement that at least 75 percent of the labor be done by blind or handicapped workers, but that limitation should be removed. The standard, whatever it is, whether it is 75 percent or 60 percent or whatever the number is, should apply to the entire work force.

Second, we are asking for a pay standard to achieve a more balanced distribution of compensation and jobs. If 75 percent of the direct labor is done by the blind or handicapped, then they should be paid an approximately equal percentage of the pay. Within that standard, workshop managers would have wide discretion to determine job assignments and recruiting policies.

Third, we are asking really that handicapped workers be treated the same as their counterparts who are sighted, who work in competitive industry. This is with respect to collective bargaining and other labor standards. If workshops want to receive contracts under the Small Business Act, they should then commit to comply with the same labor standards that small businesses must obey. We are not asking for an expansion of the labor standards, just equity.

Fourth and finally, we are asking that workshops be required to assist members of their blind and handicapped work force who want to obtain employment in regular competitive industry. Let the workshops actually be transitional employment opportunities. Our recommendation in the written statement for placement programs is designed to achieve that objective.

Now, Mr. Chairman, I have outlined what we think should be the standards that should exist for a workshop to qualify for small business set-aside contracts. These standards are the appropriate subject matter for the Small Business Act. We are not asking you to change the definition of a sheltered workshop under any other laws. We are urging you to be sure that the Small Business Act is not unfair to blind and handicapped workers, and that it doesn't transfer over the inequities of existing programs and perpetuate those inequities under a new law. Better employment opportunities and fair employment practices are objectives for this legislation.

I thank you.

[The prepared statement of Mr. Gashel follows:]

BEFORE THE COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

TESTIMONY OF THE NATIONAL FEDERATION OF THE BLIND

WASHINGTON, D.C.

MARCH 26, 1986

Mr. Chairman, my name is James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind. I am appearing in this hearing on behalf of the Federation. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone (301) 659-9314. I greatly appreciate the opportunity you have extended to me to participate in this hearing and to provide our views relative to small business set aside contracts for not-for-profit organizations operated "in the interest of" handicapped and blind individuals, commonly known as sheltered workshops.

Almost 20% of working age blind Americans who are employed work in sheltered workshops. The National Federation of the Blind provides them an opportunity to speak with a collective voice. Our members, more than 50,000 strong, are organized into state affiliates and local chapters in each state and most sizeable population areas. Our leaders, and the vast majority of our members, are blind. So when we talk about blindness, and the programs that serve or employ blind people, we speak from personal experience. We know which programs work, and we know where repairs are needed.

Seventy percent of the employable blind people in this country are either unemployed or substantially underemployed. So, if we are going to get anything out of legislation such as S. 2147, your

bill before this Committee, our aim is to reduce the outrageously high rate of unemployed or underemployed working age blind people. Sheltered workshops as they exist today are not helping, but they could be improved. My presentation in this hearing will provide you with information to help you do that.

The ultimate purpose of S. 2147 is to provide blind and handicapped people with more and better work opportunities. That is an objective we share. But the bill in its present form will not achieve our goal, Mr. Chairman. Absent certain features designed to insure employment opportunites for the blind and handicapped, to protect wages for the blind and handicapped workers, to guarantee rights of collective bargaining and observance of other normal labor standards, and to improve placement of blind and handicapped individuals in competitive employment outside of sheltered workshops, we cannot support this measure. What could we support?

The National Federation of the Blind strongly favors any legislation that will promote better work opportunities and fair employment practices for blind and handicapped individuals in sheltered workshops, as well as in competitive employment. I imagine you share this goal, too, Mr. Chairman. If so, we would like to have your assistance in making needed changes in S. 2147 when the Committee considers this bill for mark up and reporting to the Senate.

A WORKSHOP PROFILE

A description of a typical sheltered workshop might help to

set a framework for the recommended changes we intend to offer for S. 2147. Our specimen workshop is the Industries Program for the Blind and Handicapped operated by the State of Connecticut, Board of Education and Services for the Blind. The workshop has plant locations in Newington and Wethersfield. Both will soon merge into a single facility located in West Hartford. The figures I will cite concerning employment and pay come from 1983 and represent the pattern of this program's operation in the years before and since.

If you include all positions from direct labor to top management in the Connecticut workshop, there is a total workforce of 116 individuals. Eighty-five perform direct labor jobs, and 31 hold positions classified as management, supervision, and indirect labor. Of the 85 direct labor workers, only 6 are sighted with no reported handicaps. Eight sighted workers have handicaps, and the remaining 71 direct labor employees are blind, some with other handicaps. As for the 31 employees classified as management, supervision, or indirect labor, 20 of them are sighted without reported handicaps. Six more are sighted with handicaps, and 5 are blind--3 with other handicaps and 2 without.

Ninety-three percent of the employees in direct labor positions are individuals reported to be blind or handicapped. But in the management, supervision, and indirect labor category, blind and handicapped people represent only 35% of the workforce. These, of course, are the better paying jobs. The figures bear that out. Total direct labor pay amounts to $151,424.00, divided up among 85 employees (93% of whom are blind or handicapped). By contrast, pay to managers, supervisors, and indirect labor

workers amounts to $293,597.00, divided up among 31 employees (only 35% of whom are blind or handicapped).

As for hourly pay averages, all blind and handicapped direct labor workers combined earn an average of $2.04 per hour, whereas all sighted handicapped or nonhandicapped direct labor workers earn an average of $4.09 per hour. Sighted workers without handicaps earn $4.20 per hour. As for managers and supervisors, sighted people without handicaps (who are in the majority in this category, holding 20 out of 31 positions) earn an average of $8.25 per hour, in comparison to their blind and handicapped co-workers, who earn an average of $5.54 per hour.

Now for the bottom line: total pay to all 116 employees at the Connecticut workshop is $445,021.00. There are 26 sighted employees who do not have handicaps, representing 22.41% of the workforce. Yet these 26 individuals were paid $283,911.00, or 63.79% of the total pay for the Connecticut workshop. That leaves $161,110.00 to be paid to blind or handicapped workers, or a little over 36% of the total pay. But the blind and handicapped (who according to these figures received a little over 36% of the pay) represent almost 78% of the workforce. That's what the figures show. Pay levels in the Connecticut workshop seem to depend strictly upon the extent of a person's handicap or blindness. The best jobs and the best pay go to sighted individuals who do not have handicaps. By contrast, workers who are blind only or blind with handicaps hold the lowest level jobs and receive the lowest pay.

I emphasize that the Connecticut workshop is absolutely typical of the nonprofit industries that now seek admission to section 15(c)

of the Small Business Act. I would challenge any of these workshops to show you a workforce that has blind and handicapped people significantly involved in management and supervision. And more to the point, I would challenge any of these workshops to show you that the percentage of pay for workers who are blind or handicapped even approximates the percentage of the workforce represented by employees who are blind or handicapped. In other words, in a workshop where 78% of all employees are blind or handicapped, they ought to be receiving 70%, 75%, or even 80% of the pay. That is the fair distribution I am talking about. But, Mr. Chairman, you won't find that kind of equitable pay distribution in the workshops. We find that to be an unacceptable condition.

EXISTING LAW

The profile of the Connecticut workshop just presented shows that work opportunites for the blind and handicapped are principally found in the direct labor positions, whereas employment for the sighted and nonhandicapped is in management and supervisory positions. Also, pay for the blind and handicapped averages well below the Federal minimum wage, whereas pay for sighted workers (even those in direct labor) is substantially above the Federal minimum. These conditions arise from two existing Federal laws--the Javits-Wagner-O'Day Act, and the Fair Labor Standards Act--both originally enacted in 1938.

Under the Javits-Wagner-O'Day Act, sheltered workshops are able to qualify for noncompetitive government contracts if 75% of the direct labor in the workshop is performed by blind or other

severely handicapped individuals. There are absolutely no requirements for blind or other severely handicapped people to be working in management or supervisory positions. Similarly, there are no requirements pertaining to pay distribution, such as a minimum percentage of pay for the blind or handicapped, or some other concept to assure that these employees are fairly benefiting from the workshop's operation. The assumption of the Javits-Wagner-O'Day Act is merely that providing the Federal business will result in jobs for the blind and handicapped, and the jobs are supposed to be direct labor.

As for pay, the requirements which apply to sheltered workshops are mainly found in section 14(c) of the Fair Labor Standards Act. This section provides several types of exemptions from the minimum wage, all of which are applicable to handicapped workers in sheltered workshops. The exemptions granted by the Secretary of Labor under section 14(c) permit wages for blind and handicapped individuals to be as low as 25% of the Federal minimum wage. Further exemptions which apply to units known as "work activities centers" allow wages even below 25% of the Federal minimum. Industries classified as "regular workshops" are required to pay the blind and handicapped workers at least 50% of the minimum wage, but exemptions for individual workers below the 50% subminimum will be granted if the proper forms are filed with the Department of Labor.

The provisions of existing law just described show that workshops already enjoy a special status in obtaining noncompetitive Federal contracts and in operating under labor standards that are

less stringent than the requirements which apply to their counterparts in competitive small business. The question which Congress should now examine in the present consideration of extending small business set aside contracts to workshops is whether under existing laws the blind and handicapped workers are actually getting a fair shake. Are these not-for-profit organizations actually operated "in the interest of" handicapped individuals? The evidence shows that they are not.

COLLECTIVE BARGAINING

Are sheltered workshops subject to the jurisdiction of the National Labor Relations Act? That is a subject which has been hotly debated. Without the collective bargaining rights which their counterparts in competetive small business have, the blind and handicapped workers in workshops have no mechanism to negotiate pay equity, layoff protections and recall guarantees, improved working conditions, fringe benefit plans, or any other issue of labor/management relations that may arise. So employees in these workshops are largely at the mercy of the managers, and their only hope is that the managers will be motivated by a benevolent spirit.

In recent years, both the National Labor Relations Board and the Federal courts have been asked to rule on various union representation requests presented by workers in sheltered workshops. More and more the tendency of the Board has been to assert jurisdiction, finding that the workshops are primarily conducting business activity in the generally accepted sense. In an unbroken string of four cases involving workshops for the blind over the past ten years, the National Labor Relations Board

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has asserted jurisdiction, and the appeals courts in two Federal circuits have concurred that collective bargaining in the workshops is a proper form of labor protection for these workers.

In opposition to these rulings, the workshops have claimed an exemption from the National Labor Relations Act. They have argued that Congress has consciously given them a preferred status by enacting the Javits-Wagner-O'Day Act and the Fair Labor Standards Act, both of which (according to the workshops) give deference to the management of the workshops in determining how their blind and handicapped workers will be treated. Believe it or not, the workshops actually contend that the blind and handicapped people who perform direct labor are not even employees. But that sophistry is not fooling the National Labor Relations Board nor the Federal courts.

A principle fact that shines through the smokescreen of talk about rehabilitation and therapy for the handicapped is the productive output of the blind and handicapped workers in the workshops. Under the Javits-Wagner-O'Day Act alone last year 15,000 of these direct labor workers produced nearly $300 million in sales to the Federal government for their sheltered workshop employers. Yet these workers only received pay amounting to about $41 million, or 13.66% of the gross sales. Need I say that the industry standard for labor pay as compared to gross sales far exceeds the 13.66% paid last year to the blind and handicapped workers holding labor jobs in the Javits-Wagner-O'Day program? I doubt that any labor union in this country would settle for such a paltry return for its members.

RECOMMENDATIONS FOR S. 2147

If Federal small business set aside contracts are extended to sheltered workshops, Congress should require the workshops to provide better work opportunities and fair employment practices for the blind and handicapped employees.

(1) An employment standard should be established which is not limited to direct labor jobs. In this respect, S. 2147 currently follows the limited standard of the Javits-Wagner-O'Day Act, requiring that at least 75% of the direct labor be performed by blind or handicapped people. We are suggesting that a standard be established for the entire workforce, not just the direct labor jobs. Seventy-five percent of all work hours to be performed by the blind or handicapped would be an acceptable standard in our opinion. But the issue is not the precise percentage. Whatever the percentage, the Small Business Act should not perpetuate an employment standard for the blind and handicapped which has proven to be a severe limitation on employment opportunites in jobs other than direct labor in the workshops.

(2) A pay standard for blind and handicapped workers should be established to achieve job equity and fair distribution of compensation. S. 2147 has no pay standard currently. The pay standard should require that all workers receiving compensation under contracts awarded pursuant to section 15(c) of the Small Business Act shall be paid at least the Federal minimum wage. Beyond that, an overall pay standard should be included to assure that at a minimum there will be an approximate balance between the percentage of pay for blind and handicapped workers as compared

to the percentage of their numbers in the workforce. In other words, if blind and handicapped individuals represent 70% of the entire workforce, then the standard for that workshop would be that the blind and handicapped receive an approximate 70% pay distribution.

(3) All labor management and labor standards requirements otherwise applicable to similar small businesses should apply to workshops seeking contracts under section 15(c) of the Small Business Act. The Small Business Act should not perpetuate substandard labor conditions for blind and handicapped workers. Just as small business owners are required to bargain with their employees (if the employees elect to bargain and the business is big enough) so, too, the managers of sheltered workshops should bargain with their blind and handicapped employees, if the employees want a union. So, jurisdiction of the National Labor Relations Act and all other labor standards that otherwise apply to small businesses should apply to sheltered workshops that participate in the section 15(c) program, but only to the extent that such requirements apply to all other businesses. We are not seeking an expansion, just equity.

(4) Workshops that participate in section 15(c) of the Small Business Act should show, in advance of the receipt of any contract, that a working agreement has been established with agencies and industries in the community under which blind and handicapped individuals will be employed to fill existing and future job vacancies outside of the sheltered workshop. Then, actual job placement performance in accordance with such agreements should be evaluated as a principle factor in

connection with the award of future Federal contracts under section 15(c). This recommendation would properly assist the workshops in fulfilling their role as transitional employment settings designed to prepare individuals to compete in the nonsheltered workforce.

Mr. Chairman, as I have stated in several ways before, these four recommendations have the combined purpose of providing better employment opportunities and fair employment practices for blind and handicapped individuals who work in sheltered workshops. I must emphasize, however, that these proposals are specifically tailored to the objective of permitting workshops to qualify for small business set aside contracts under section 15(c). The standards for eligibility of the workshops, which we are proposing in these recommendations, are clearly proper requirements within the scope of section 15(c). We are not asking you to change the definition of a sheltered workshop under other laws or to strike down any of the existing special or preferred requirements that workshops hold claim to. What we are asking is that within the purview of the Small Business Act (and only for purposes of participating in the small business set aside program) workshops should be required to meet certain qualifying standards aimed at better work opportunities and fair employment practices for their blind and handicapped employees.

The authorization for workshops to have small business set aside contracts should at least obtain that goal. If it does, S. 2147 will truly be a beneficial addition to the growing body of Federal law designed to provide more employment opportunities and equal rights for blind and handicapped people. Reports by

Congressional committees (both in the House of Representatives and in the Senate) confirm what I have said about limited employment opportunities and low pay for blind and handicapped workers under present conditions as permitted by existing Federal laws. Similar findings have been made by the General Accounting Office, the Department of Labor, and even private research teams who have surveyed workshops pursuant to Congressionally ordered studies. In concluding this statement I would urge you to review these findings and thereby ensure that the legislation you develop and refine in this Committee will be properly written to achieve better employment opportunities and fair employment practices for the blind and handicapped in jobs provided pursuant to section 15(c) of the Small Business Act. Above all, the legislation you approve and report to the Senate should not perpetuate the limits and inequities of other programs. I thank you.

Senator WEICKER. Thank you very much.
Our next witness is Mr. Whittaker.

STATEMENT OF DWIGHT WHITTAKER, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Mr. WHITTAKER. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you and this committee.

My name is Dwight Whittaker. I am the executive director of Development Workshop in Idaho Falls, ID. I am here representing the National Association of Rehabilitation Facilities. NARF is the national association which represents community-based facilities. Many of the things that you have already heard today are covered in my written text, and so I will keep my remarks as brief as possible, and yet cover some of the salient points.

As a result of the lapse of previously enacted authority, the rehabilitation facilities have lost and continue to lose the opportunity to train and employ the disabled citizens of this great country. When small business set-aside privileges were available to the rehab facilities, they proved to be a valuable source of training and employment opportunities for many severely disabled and blind individuals. You have heard and have, as a result of written testimony and other materials, the historical impact and chronological data concerning the Small Business Set-Aside Program.

Currently there are only 240 rehabilitation facilities serving the severely disabled which are providing services or commodities to the Federal Government under the Javits-Wagner-O'Day Program.

The total number of rehabilitation facilities in the United States is estimated to be only about 5,000. Of these, it is estimated that less than half would have the capability to bid on set-aside contracts. Again, this compares to the 14 million small businesses that the Small Business Administration estimates are currently in existence. Rehabilitation facilities are hardly a threat to the small business community.

Many rehabilitation facilities presently have inadequate capital revenue, minimal equipment, and other resources necessary to produce goods and services for the Federal Government. Because of these limitations, the number and type of Government contracts that rehab facilities could bid on would be minimal. Why then is this legislation and the authority to bid on Government contracts so important to the rehabilitation community? I have about eight points that I would like to emphasize.

No. 1, this will provide an increased opportunity for the severely handicapped and the blind to receive training and employment and job opportunities within their community setting.

No. 2, it would allow the rehabilitation facilities access to small Government contracts that are, in many cases, not available to them within their own local communities. In our own case at Development Workshop in rural Idaho Falls, ID, we have been manufacturing survey stakes and hubs for GSA for the past several years. When the authority was granted rehab facilities to bid on small business set-asides, we were able to obtain this particular contract. Since we have been producing survey stakes and hubs for the Government, specifically GSA, we have had the opportunity to provide employment and training for over 150 disabled individuals that would not have had that opportunity in our rural community. Through this small business set-aside contract, we have been able to provide meaningful training and employment opportunities for disabled persons.

No. 3, under the provisions of S. 2147 a minimum of 75 percent of the direct labor force on Government contracts must come from disabled individuals. This would allow the rehabilitation facilities to help the Federal Government carry out the already established public policy of providing jobs for persons with disabilities. I think the rehabilitation facilities clearly understand the intent of this legislation, and are not intending to subcontract work out to for-profit organizations. This, of course, can be carried to extremes but we understand the intent is to provide employment and training opportunities for the disabled, and we intend to do just that.

No. 4, another advantage of S. 2147 to the rehabilitation facility community is that there are minimal time constraints associated with a small business set-aside contract. The process to add an item to the procurement list under the Javits-Wagner-O'Day Program is sometimes very time consuming. It may take months or years before a contract with the U.S. Government under the Javits-Wagner-O'Day Program can be identified and obtained.

No. 5, this bill will also allow the rehabilitation facility community the opportunity to provide goods and services to the U.S. Government at a fair and reasonable price. In many areas we feel that we can help the Government procure its products and services at the most reasonable and economical price possible. As a result,

while employing disabled and blind individuals, we can contribute to the proposition of keeping the costs of Government as low as possible while ensuring that our tax dollars are utilized and will bring the greatest return possible. Another reason is that rehabilitation facilities would not be required to commit their resources beyond the timeframe of a specific contract. They also would be able to enter into the marketplace based on the identified needs of the U.S. Government under the Small Business Set-Aside Contract Program.

No. 6, another very important benefit that this bill will provide is the opportunity for people with disabilities to offset their tax-supported payments, such as social security disability income, with earned income. In many cases the disabled and blind are able to eliminate their dependency upon State and Federal dollars as a result of earned income through the rehabilitation facility programs. The Small Business Administration set-aside contracts would greatly enhance the continuation and expansion of earned income being available to displace tax-supported payments to disabled persons.

No. 7, in a real sense the opportunity to bid on small business set-aside contracts will increase competition on contracts, ensuring the most reasonable price possible to the U.S. Government.

No. 8, the rehabilitation facility community recognizes that it will not be the successful bidder on every contract. Our own experience at development workshop I think is fairly typical of all rehabilitation facilities. When we were permitted to bid on small business set-aside contracts between 1981 and 1983, we submitted three bids on contracts for products, one for talcum powder and two to manufacture plastic sheaths for firefighting tools for the U.S. Forest Service. I have samples of these sheaths.

These are firefighting tool sheaths. This is a shovel sheath. This is a brush hook. These are used to protect the sharp instruments in transportation and, of course, to keep them sharp when they are needed in the field. We were only awarded one of the sheath contracts in the amount of $140,000. The other contract was not awarded to our particular facility.

Similarly, in the service area, we bid on three janitorial contracts and were only awarded one contract on a competitive bid in the amount of $74,000 for a small Department of Energy building within our particular community.

It should be noted that in producing these particular items, we did the entire process. None of it was subcontracted out to any for-profit enterprise. The injection molding equipment was purchased by our facility. We did the molding, the assembly, the packaging, and the shipping. All of it was done within our rehab facility.

Rehabilitation facilities across the United States must be fiscally responsible and good business managers like any other business enterprise. We cannot bid on any contract in a fiscally irresponsible manner. If we do so, we will go out of business like any other business enterprise. We must operate our facilities in accordance with good business practices. In fact, because we employ and work with severely disabled individuals, we must be more conscientious of good business practices than most businesses throughout the United States.

The rehabilitation facilities want to maintain a positive, working relationship with the small business community. As a result, S. 2147 provides assurance that small business concerns will be protected. For example, an annual ceiling of $50 million has been implemented. The $50 million annual cap represents less than one-half of 1 percent of the total Small Business Administration set-asides. Small businesses also have the right to appeal if there is a significant adverse impact upon their business. A third safeguard is the 5-year authorization. The program sunsets in 5 years, in order that there may be a review of impact and successes conducted by the General Accounting Office. Adverse impact on small businesses is considered when appropriate.

In summary, Mr. Chairman, S. 2147 will allow, once again, the rehabilitation facilities to competitively bid on Government contracts. It is a restoration of eligibility that holds the promise of providing disabled individuals with employment opportunities while providing goods and services for the U.S. Government under the Small Business Set-Aside Program in a competitive manner. Having the opportunity to bid on Federal contracts provides rehabilitation facilities with the opportunity to enhance and enrich the lives of disabled citizens throughout the United States.

You have the support and the encouragement of the entire rehabilitation community to make this legislation law, and to join with the not-for-profit sector and the for-profit sector in making society a better place for everyone. This is a bill that will make everyone winners. The Government will receive products and services at the lowest possible cost. Disabled individuals will be provided training and employment opportunities that are wider and more varied than have been available to them in the past, and the small business community will be adequately protected to ensure that there is not an adverse impact on their business.

Thank you, Mr. Chairman, for the opportunity to make this presentation.

Senator WEICKER. Thank you, Mr. Whittaker.

Our last panelist is Mr. Anthony Young, chairman of the board of Fairfax Opportunities Unlimited.

STATEMENT OF ANTHONY YOUNG, CHAIRMAN OF THE BOARD, FAIRFAX OPPORTUNITIES UNLIMITED, INC.

Mr. YOUNG. Thank you, Mr. Chairman, and good morning. I am Tony Young, chairman of the board of Fairfax Opportunities Unlimited. We are a sheltered and supported employment, training, and service provider in Fairfax County, VA.

I have been dealing in disability advocacy and service provision for over 10 years now, in issues ranging from architectural barriers to independent living, but the last 3 years that I have spent with Fairfax Opportunities has been a major learning experience for me, to understand the intricacies that are involved in the operation of a work center. We deal with employees, parents, and advocates, budget directors, local, State, and Federal agencies, and all have to work together in order to provide services efficiently. In addition, the employment and training needs of different severely disabled

workers are varied and need to be looked at individually in order to accommodate all of their needs.

I have several points that I would like to make today, Mr. Chairman. The first involves the upward mobility of work center employees into management. As we all know, everyone's career goals, whether they are disabled or nondisabled, are different. While it may be appropriate for a person whose only disability is blindness to move into a supervisory or management position, I don't think it is reasonable for a person whose disability involves mental illness or mental retardation to be expected to move up into a management position.

At FOU, when a person enters our program they are evaluated to determine their productivity level, and then a plan is developed in order to increase that productivity to its maximum potential. When a person arrives at an 80 percent productivity level, they are then placed in a pool where they are eligible for supported, competitive employment. If they are not placed after a reasonable period of time, an evaluation is then conducted to determine why they have not been placed.

People, once they enter our program and proceed to the competitive pool, do so at widely differing rates. This is primarily due to the differences in disability among people. Some persons, of course, never do reach the point where they can move into supported competitive employment. They simply don't have the capacity, and in some cases persons don't wish to move into supported competitive employment. The point is, they have the option to move there if they have the ability and the will to do so.

It is very difficult to compare two persons with the same disability. It is even more difficult to compare two persons who have different disabilities. To compare persons with mental illness, mental retardation disability with a blind person is inappropriate. To hold those same people to the same standard of upward mobility, an objective standard, is unrealistic and unreasonable. Perhaps a better measure of their success would be either increased productivity, increased socialization skills, or increased independence.

Work center administration requires education and experience in management, human services, contract administration, and many other fields. Special education and work center employment, while they are very good, are simply not sufficient to prepare a person for a career in work center administration. This does not, Mr. Chairman, preclude qualified persons with disabilities to assume roles as supervisors, managers, or leadership positions in work centers.

My second point involves wages and productivity. As you know, work center employees and wages are regulated by the Department of Labor through the Fair Labor Standards Act. Employees are paid on a formula based on prevailing area wages, the type of job that they are doing, and their individual productivity. For example, if a nondisabled worker can produce 150 widgets an hour and person with a disability can produce 100 widgets an hour, the person's productivity is 66 percent. If the prevailing wage in the area is $4.50, then the person with the disability would earn no less than $3 per hour.

Given a contract requiring 3 man-hours of labor, a small business would assign three workers, but a work center might assign four, or five, or six workers, depending on who was available and their productivity, in order to get the job done. Assigning more workers to the contract would require that more floor space, more utilities, and other overhead costs would be assigned to the contract in order to get the work done.

To require that work centers pay the prevailing or the minimum wage to their workers would price work centers out of contracts or, something I consider equally bad, would require work centers to employ only the least severely disabled persons possible, which would once again leave the most severely disabled persons without adequate services. In addition, in my opinion any person who is 100 percent productive should be working in competitive, not supported competitive or sheltered employment, if at all possible.

Fairfax Opportunities and the other work centers around the country have long waiting lists for persons with disabilities who have completed their education programs and who are languishing at home or in institutions waiting to get jobs, to earn some money, to increase their independence, and increase their sense of self-worth. We feel that the set-aside program is part of a comprehensive plan that could increase the number of severely disabled persons employed in the country.

I would be happy to answer any of your questions which you might have.

[The prepared statement of Mr. Young follows:]

TESTIMONY OF TONY YOUNG, CHAIRMAN OF THE BOARD, FAIRFAX OPPORTUNITIES UNLIMITED, INC.

Good morning Mr. Chairman. I am Tony Young. I am Chairman of the Board of Fairfax Opportunities Unlimited, Inc., a program providing sheltered and supported employment services in Fairfax County, VA.I have been actively involved in disability, advocacy, and service delivery issues for the past ten years and have been associated with Fairfax Opportunities Unlimited for three years.It has been a major learning experience for me to understand the intricacies of how an organization like FOU operates; juggling responsibilities to employees, parents and advocates, the Board of Directors, and local, state, and Federal agencies. I have also learned that the employment and training needs of persons with different disabilities are varied and need to be looked at individually.

I would like to discuss several points which I believe are crucial for you to keep in mind as you consider S. 2147.

UPWARD MOBILITY

Some issues have been raised concerning the upward mobility of work center employees into management positions. Of course everyone's career goals , whether they are disabled or nondisabled , are different. While it may be appropriate for workers whose only disability is blindness to move into supervisory or management positions, it is not necessarily reasonable or appropriate to assume that the vast majority of the workers in work centers who are mentally retarded or mentally ill will be able to move up into such positions. When a person enters Fairfax Opportunities Unlimited (FOU), the person is evaluated and a plan is drawn up to assist in the development of the skills necessary for that person to move toward supported competitive employment. When an 80% productivity level is reached , the person is placed in a pool of persons who are eligible for supported competitive

employment. If the person is not placed in a reasonable amount of time, an evaluation is conducted to determine why they have not been placed.The time that elapses between time of entry and supported placement varies widely among individuals, and some people never do reach a skill level where they can perform in the competitive arena. The major factor in this disparity is the person's disability. It is difficult , at best, to compare two persons with the same disability, much less two persons with different disabilities. I feel that to compare severely disabled persons who are mainly mentally retarded or mentally ill with persons who are blind is inappropriate.

Holding the two groups up to the same standard for upward mobility is unrealistic and unreasonable. For the mentally retarded and mentally ill workers in most work centers it may be more appropriate to use increased productivity, more socialization skills, and increased independence as measures of success.

The administration of a work center is a complex maze of rules and regulations that requires education and experience in management, human services, contract administration, and other fields. One cannot expect special education and work center experience to sufficiently prepare a person with severe mental disabilities to administer a work center or to be a supervisor. This does not , however, preclude qualified disabled persons from supervisory, management, or leadership positions at work centers.

WAGES AND PRODUCTIVITY

My second point concerns wages and productivity. Work centers are regulated by the US Department of Labor through Section 14(c) of the Fair Labor Standards Act. Workers are paid wages based on the job they are performing, their individual productivity compared to that of a non-disabled person doing the same job, and the prevailing rate for that job in the community.

For instance, if a disabled person could assemble 100 widgets an hour, and a non-disabled person could assemble 150 an hour, the work center would pay the disabled worker 66% of the prevailing rate. So, if the non-disabled worker was paid $4.50, the disabled worker would be paid no less than $3.00 per hour.

Given a contract requiring 3 man-hours of labor a small business would assign 3 workers to the job. A work center might assign 4 or more workers to the job to accomplish the same level of overall productivity. The determination as to how many workers would be required would be based upon the workers being served in that facility. Because the number of persons needed to accomplish the same amount of work is often much higher for the work center the costs of such things as overhead, supervision, and utilities are higher. Requiring work centers to pay prevailing or minimum wages to less than fully productive employees would effectively price work centers out of contracts or force them to use much less severely disabled workers. Additionally, it is my opinion that any employee who is 100% productive should be in regular competitive employment whenever possible.

Finally, Fairfax Opportunities Unlimited and other work centers around the country all have depressingly long lists of persons who have successfully completed their education and are languishing at home or in institutions waiting for the job that will give them some measure of independence. We view the SBA set-aside bidding eligibility as an important part of a comprehensive plan that will allow us to increase the number of severely disabled persons we can employ.

The National Association of Rehabilitation Facilities, of which Fairfax Opportunities Unlimited is a member, will be submitting additional written testimony on these and other issues associated with this bill.

I appreciate the opportunity to appear before you today. I will be glad to try and answer any questions the Committee may have.

Senator WEICKER. Tony, thank you very much.
Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Thank you very much, Mr. Chairman.

I would like to apologize, first of all, to members of the former panels for not being able to be here for the full testimony. I was down at the Labor and Human Resources Committee, where we had hearings on the reauthorization of the National Science Foundation. My apologies for being late. Particularly I would like to welcome Bill Wolk, who is here from Work, Inc. near Boston, and thank him for the inspiration that he has provided to so many disabled people in Massachusetts and the opportunities that he has provided and helped to provide for work.

I also, Mr. Chairman, want to thank you. You know, we all serve on about 12 to 16 committees around here. I think that I have been to more hearings and more authorizations and more efforts to do something for disabled in America as a result of Senator Weicker's efforts than I have any other hearing or any other committee I serve on. I think it is a tribute to his interest and his commitment to this issue.

Just yesterday we were in the Subcommittee of Labor and Human Resources on the Handicapped, and we heard some very talented and proud individuals who were talking about the gains in their lives on a personal level as a consequence of the employment that they now have as a result of projects with industry. That I think, if anything, celebrates what we are trying to do here in this authorization effort. It was their testimony that talked about the

value to them of being able to be part of the tax base and be part of the working community, and not feel that their lives were going to be confined either to institutions or to other kinds of barriers that exist, so I am delighted to be here to listen to what I can of this and to be part of this committee's efforts to authorize this legislation.

[The prepared statement of Senator Kerry follows:]

STATEMENT BY SENATOR JOHN KERRY

GOOD MORNING. I WANT TO WELCOME OUR PARTICIPANTS TO TODAY'S HEARING ON THE REAUTHORIZATION OF WORKSHOP ELIGIBILITY FOR GOVERNMENT CONTRACT.

I PARTICULARLY WANT TO WELCOME DR. WILLIAM WOLK FROM MY HOME STATE OF MASSACHUSETTS. BILL RUNS AN EXTENSIVE REHABILITATION FACILITY CALLED WORK INC. OUTSIDE OF BOSTON, THAT HAS HELPED PLACE THOUSANDS OF DISABLED CITIZENS INTO THE WORK FORCE OVER THE YEARS. BILL HAS INSPIRED HANDICAPPED PERSONS IN MASSACHUSETTS. THROUGH HIS TIRELESS WORK IN THE SCHOOL SYSTEMS HE HAS PREPARED YOUNG CITIZENS FOR WORK UPON GRADUATION, OFFERING THEM HOPE AND OPPORTUNITY TO BECOMING INDEPENDENT AND SELF SUFFICIENT. BILL I APPLAUD YOUR EFFORTS IN THIS FIELD AND LOOK FORWARD TO HEARING YOUR TESTIMONY.

I WANT TO COMMEND THE CHAIRMAN FOR THE LEADERSHIP ROLE HE HAS TAKEN ON ALL ISSUES FACING DISABLED CITIZENS. AS THE THE CHAIRMAN OF THE SUBCOMMITTEE ON THE HANDICAPPED, SENATOR WEICKER HAS DISPLAYED AN UNFALTERING COMMITMENT TO ASSISTING HANDICAPPED PERSONS IN ACHIEVING A BETTER QUALITY OF LIFE. I AM PLEASED THAT WE ARE REAUTHORIZING THIS PROGRAM IN THE SMALL BUSINESS COMMITTEE, HOWEVER, AS THIS EMPHASIZES THE

ESSENTIAL FACT THAT DISABLED PERSONS ARE A VIABLE COMPONENT OF AMERICA'S WORK FORCE. THROUGH THEIR PARTICIPATION IN THE LABOR MARKET HANDICAPPED PERSONS ARE BENEFITING, NOT BURDENING THEIR COMMUNITIES BY BOTH PAYING TAXES AND EARNING WAGES THAT ENABLE THEM A DEGREE OF INDEPENDENCE.

IN A RECENT HARRIS POLL SURVEY IT WAS DETERMINED THAT WHILE THERE ARE OVER 20 MILLION UNEMPLOYED DISABLED PEOPLE OF WORKING AGE, TWO-THIRDS OF THAT GROUP WANT TO WORK. THESE CITIZENS ARE FACED WITH A HOST OF BARRIERS TO EMPLOYMENT; BE IT LACK OF TRANSPORTATION, LACK OF ACCESS TO BUILDINGS, LACK OF SUFFICIENT TRAINING, OR EVEN A LACK OF FUNDS TO FINANCE MODERN TECHNOLOGIES FOR ASSISTIVE DEVICES AND SITE MODIFICATIONS THAT ENABLE HANDICAPPED PERSONS TO WORK. BUT THE NUMBER ONE BARRIER IS LACK OF AVAILABLE JOBS. IN MY MIND IT IS OUR RESPONSIBILITY AS MEMBERS OF CONGRESS TO WORK TO ENSURE THAT DISABLED CITIZENS ARE NOT CONFRONTED WITH A LACK OF JOBS AND OPPORTUNITIES. THIS LEGISLATION BEGINS TO ADDRESS THAT ISSUE BY ALLOWING HANDICAPPED PERSONS TO BID COMPETITIVELY FOR GOVERNMENT CONTRACTS.

YESTERDAY THE SUBCOMMITTEE HELD ITS SECOND DAY OF HEARINGS ON THE REHABILITATION ACT, AN ACT DESIGNED TO INCREASE THE INDEPENDENCE OF HANDICAPPED INDIVIDUALS AND TO HELP THEM BECOME SELF SUPPORTING. I WANT TO TAKE THIS OPPORTUNITY TO EMPHASIZE THE FACT THAT SENATOR WEICKER AND MYSELF MET SOME VERY TALENTED AND PROUD INDIVIDUALS YESTERDAY WHO WITHOUT THE ASSISTANCE OF SHELTERED WORKSHOPS AND PROJECTS WITH INDUSTRY FEARED THAT THEY WOULD EITHER BE LIVING IN INSTITUTIONS OR END UP ON THE SOCIAL SECURITY DISABILITY ROLLS INSTEAD OF WORKING AND CONTRIBUTING TO AMERICA'S TAX BASE.

THE INTENT OF THE LEGISLATION WE HAVE BEFORE US TODAY IS SIMPLE: IT IS TO REMOVE THE RESTRICTIONS WHICH CURRENTLY PROHIBIT SHELTERED WORKSHOPS FOR THE HANDICAPPED FROM PARTICIPATING IN COMPETITIVELY BID GOVERNMENT CONTRACTS RESERVED FOR SMALL BUSINESSES. IT IS, IN A SENSE AN ANTI-DISCRIMINATION BILL, AND NOTHING MORE.

THIS IS BECAUSE THE BILL DOES NOT SET FORTH SPECIAL TREATMENT, DIFFERENT STANDARDS, OR GREATER PRICE ALLOWANCES FOR SHELTERED WORKSHOP - IT SIMPLY OPENS UP A MARKET FOR THEM TO COMPETE WHERE THEIR RELATIVE ABILITIES AND EFFICIENCIES ALLOW THEM TO DO SO.

THERE IS, OF COURSE, ANOTHER PROGRAM - AUTHORIZED BY THE JAVITZ-WAGNER-O'DAY ACT, WHICH DOES INCREASE WORK OPPORTUNITIES FOR THE HANDICAPPED, BY CREATING SPECIAL, SUBSIDIZED, IF YOU WILL, PROCUREMENT FOR SHELTERED WORKSHOPS.

HOWEVER, THERE ARE THOSE WHO ARGUE THAT THE 15(C) PROGRAM PROPOSED HERE SHOULD BE EVALUATED WITHIN THE CONTEXT OF THE JWOD PROGRAM, BECAUSE OF THE INTERRELATIONSHIP OF THE TWO. THAT IS IN MY OPINION, A FAIR AND REASONABLE REQUEST, AND ONE THAT I HOPE THE COMMITTEE WILL TAKE INTO ACCOUNT. I DO WANT TO EMPHASIZE THAT I AM MINDFUL OF THE POTENTIAL COMPETITIVE PRESSURES CERTAIN SMALL BUSINESSES MIGHT EXPERIENCE AS A RESULT OF THIS PROPOSAL - COMPANIES THAT HAVE FOR YEARS BEEN RELYING ON GOVERNMENT CONTRACTS AND SMALL BUSINESS SET ASIDES WILL SUDDENLY FIND THEMSELVES WITH SOME NEW AND VERY ABLE COMPETITORS WHO WERE PREVIOUSLY EXCLUDED. WHILE THIS IN ITSELF IS TESTIMONY TO THE SUCCESS SHELTERED WORKSHOPS HAVE HAD IN HELPING THE HANDICAPPED BECOME PRODUCTIVE MEMBERS OF SOCIETY, ANY POTENTIAL DISRUPTIONS ARE OBVIOUSLY OF GREAT CONCERN.

I AM CONFIDENT THAT THIS HEARING WILL SHED LIGHT ON THIS POTENTIAL PROBLEM AND PROVIDE US WITH A BETTER UNDERSTANDING OF POLICY OPTIONS FOR ALLEVIATING ANY PROBLEMS BEFORE THEY ARISE.

Senator KERRY. I am mindful, obviously, from an entrepreneurial perspective and a small business perspective, of some concerns about this, and I would just like to ask you, Mr. Whittaker, if you might comment from your perspective perhaps on your perception, from your point of view, of the sheltered workshop concept. Do you see problems with respect to competition with small businesses? How do you view that part of the argument?

Mr. WHITTAKER. Mr. Chairman and Senator Kerry, our perspective is that there are enough restraints and safeguards within the proposed legislation that would help protect the small business community. They would not be adversely impacted. There is a place for the rehab facilities to enter into the small business set-aside bidding process and enhance the employment and training opportunities for disabled people without negatively impacting the small business community.

Senator KERRY. Do you, on the other side, see the potential for specific kinds of positive cooperation? Do you think there are ways that we could enhance that?

Mr. WHITTAKER. Mr. Chairman and Senator Kerry, I believe that there are opportunities for cooperation and working together that would overall help the disabled population, the small business community, and certainly our country as a whole.

Senator KERRY. Did your workshop participate in the section 15(c) program between 1981 and 1983 when participation of nonprofits was authorized?

Mr. WHITTAKER. Mr. Chairman and Senator Kerry, yes, we did.

Senator KERRY. Can you tell me something about your experience during that time? Was it better or worse than the JWOD program? I understand that it is more expensive to the Federal Government. Is that——

Mr. WHITTAKER. I'm sorry. I didn't hear the question.

Senator KERRY. I understand that the JWOD program is more expensive to us. Is that correct or not?

Mr. WHITTAKER. Mr. Chairman and Senator Kerry, no, sir, I don't believe it is more expensive to the Government. A fair market price has to be established in the JWOD program as well. One of the previous testimonies indicated that there were continuous semiannual price increases once a JWOD contract was obtained. We have personally experienced price decreases, so I don't think that it is an assumption that prices are going to continually go up, because in fact it has not happened within our facility.

I will share with you the experience we had at Development Workshop during the 3-year period. The survey stakes and hubs was one item that we were able to obtain in 1977, but during this 3-year period that you specifically asked about, there was a total of 737,000 dollars' worth of contracts that we actually bid on. We were only awarded or able to obtain 214,000 dollars' worth of contracts, which represents only 29 percent of the total contracts that we actually bid on. That included the janitorial contract and these sheaths for the Forest Service. The two contracts totaled that $214,000.

Senator KERRY. Mr. Young, do you want to comment on any of the questions that I asked Mr. Whittaker, with respect to your experience, or not?

Mr. YOUNG. I think Mr. Whittaker covered them.

Senator KERRY. Fine. Let me just ask Mr. Gashel, if I could, how many blind individuals who also have disabilities participate in the sheltered workshops nationwide? Do you know?

Mr. GASHEL. Oh, yes. Well, who also have disabilities, it would probably be 3,500 to 4,000 who also have disabilities, so blind with handicaps combined would be about 5,500.

Senator KERRY. So without handicaps about 2,500?

Mr. GASHEL. No. More like 3,500 to 4,000.

Senator KERRY. Now what would you suggest that we do to get these different groups of individuals out of a sheltered workshop and into some other employment? Are there specific steps you would recommend?

Mr. GASHEL. Well, I think this particular bill offers one opportunity. I mean, one of the recommendations, Senator, that we have in our position is that there be a requirement for a workshop accepting a section 15(c) contract to have negotiated and set up in advance, in writing, an agreement with local industry or agencies in the community to employ people who are working in the workshop in existing and future job vacancies in the industry, and that future contracts under 15(c) be awarded on the basis of past performance with that standard.

I mean, we don't put any numbers on that, but I think the fact that there has to be a written agreement in advance and a procedure set up to transfer people from the workshop into competitive employment would be a great advantage, and I don't know of anything we have like that now.

Senator KERRY. Fine. Well, I accept that.

Well, let me just say in closing, I think recently there was a Harris Poll that showed there are about 20 million unemployed persons in this country with various kinds of disabilities, and it showed that two-thirds of those people want to work, so there is a waiting, valuable resource out there that I hope this bill and our energies can do something about. Your testimony has helped here today, and I thank you.

Thank you, Mr. Chairman.

Senator WEICKER. Thank you very much, Senator Kerry. I appreciate it.

The committee will be adjourned.

[Whereupon, at 11:15 a.m., the committee recessed, to reconvene at the call of the Chair.]

APPENDIX

WELLFORD, WEGMAN, KRULWICH & HOFF
1775 PENNSYLVANIA AVENUE, N.W.
SUITE 450
WASHINGTON, D.C. 20006
(202) 775-0200

RICHARD A. WEGMAN PAUL S. HOFF
ANDREW S. KRULWICH HARRISON WELLFORD
THOMAS H. STANTON JOHN L. SACHS
JANNE G. GALLAGHER GARY L. KAPLAN

March 26, 1986

Hon. Lowell P. Weicker, Jr.
Chairman
Senate Committee on Small Business
SR-428A Russell Sentate Office Bldg.
Washington, D.C. 20510

Dear Sen. Weicker:

The Grants and Contracts Project (GCP) appreciates this opportunity to submit a statement for the record of the Small Business Commmittee's hearing on S.2147. GCP represents a group of national voluntary organizations, including Catholic Charities USA, the Council of Jewish Federations, Inc., Family Service America and the Lutheran Social Services System, whose affiliates provide a broad range of health and human services.

GCP supports public policies that promote fair competition in government contracting. We believe that no charitable organization should be excluded from competing for these contracts. We are not suggesting that charities be given a special benefit, but only that they be allowed to compete as was the case before small business set asides were so vigorously enforced. We urge that nonprofits be allowed to compete for set asides to provide human services, including family counseling, marital counseling, counseling on alcohol and drug related problems, and youth activities and delinquency prevention, to government employees, military personnel and their families. These are services that were pioneered by nonprofit organizations.

This is a not a case of a large business seeking to compete with a small one. GCP affiliates are nonprofit organizations, generally themselves quite small, which are

rooted firmly in their communities, governed by local volunteer directors -- including small businessmen and women -- and committed to a tradition of service that is more than a hundred years old. Throughout this century, charities have labored to identify human needs and develop services to improve the quality of life for all. For example, in a previous era, nonprofit human service organizations mobilized to help assimilate waves of immigrants into the American culture and become productive citizens, a function that many of them are still performing. More recently, charitable organizations saw the disruptive effect of alcohol and drug abuse on family and work life and developed therapeutic programs for not only the abusers, but their family members as well.

Over the past two years, there has been a growing tendency on the part of government procurement officials to set aside, for small businesses, contracts for the procurement of these types of human services. This pattern does not stem from any change in the law regarding set asides; rather it apparently results from efforts by Small Business Administration officials in regional procurement centers to increase the number of set-aside contracts. Because most human service contracts are small, they become targets of opportunity for set asides.

Following are some examples of instances in which nonprofit organizations have been denied the opportunity to bid on government procurements for human services:

- In 1983, Child and Family Services of Newport County, R.I., which counseled employees of one naval installation for eleven years under one contract, was denied the opportunity to compete for a second $14,000 contract to provide information and referral services to employees of another naval facility on the same base. The contract was set aside for small businesses.

- In the spring of 1984, a regional office of the Immigration and Naturalization Service set aside a contract for detention services for undocumented aliens; this action precluded Catholic Charities of San Diego from bidding despite Catholic Charities' long history of serving refugees.

- In September 1984, a contract to provide services to the Family Service Center at the Annapolis

Naval Installation was denied the low bidder, Family and Children's Society of Baltimore, because the Society was not a small business.

- In November 1984, Child Service and Family Counseling Center of Atlanta, Ga. submitted an unsolicited proposal to the Regional Office of the Bureau of Alcohol, Tobacco and Firearms to offer counseling services to employees. Subsequently a contract RFP was developed and set aside for small business. Child Service and Family Counseling Center was not allowed to compete.

- In September 1985, Family Services of Tidewater, Va. was the low bidder on a contract for counseling services for employees of the Norfolk District Corps of Engineers. However, because the procurement had been set aside, Family Services was ruled ineligible and the award was made to the second-lowest bidder.

Surely the problems facing military families today merit the best possible counseling services. Excluding the entire nonprofit sector from competition for contracts to provide these services is hardly calculated to achieve this goal.

The rationale that is offered by the Small Business Administration for justifying this type of set aside is that nonprofit organizations have unfair advantages in competition against small businesses. Thus, in the case of Family Services of Tidewater, Va., the Small Business Administration ruled that, "Organizations sheltered by a tax-exempt status which are not motivated by a desire for profit have an unfair competitive advantage in the marketplace." We are mystified by this twisting of the public service commitment of nonprofit volunteers and professional staff into an "unfair competitive advantage."

Tax exempt status has been granted to charitable organizations because of the value of our services to the community and the fact that these services lessen the burdens of government. Furthermore, a recent study of IRS data on the actual tax patterns of small business has shown that less than 50% of commercial providers of social services pay corporate income taxes and the average tax paid amounted to only 0.26% of the firms' gross receipts.

The Small Business Administration has repeatedly suggested that the solution to our problem is to form for-profit subsidiaries to bid on these contracts. This solution, however, reflects a startling lack of comprehension of the nature and purposes of our nonprofit organizations, as well as a surprising lack of sensitivity to the costs and red tape that following their suggestion would incur.

The kinds of contracts for which we seek to compete are directly related to the charitable purposes for which GCP affiliates were formed. As such they are properly carried out by nonprofit organizations. Many of our affiliates would deeply resent the notion that they must adopt a profit-seeking format in order to provide services to members of their communities. Moreover, formation of a for-profit subsidiary would impose substantial legal and accounting fees on what are, for the most part, very small organizations.

Excluding nonprofit organizations from the ability to compete for federal human service contracts comes at a time when human service organizations already are experiencing substantial cuts in government funding as a result of reduced government spending. Depriving nonprofit organizations of the opportunity to receive these contracts will only impair their capacity to serve people in need in our communities. We believe that this is not in the best interest of the government or ofthe citizens of this country.

Sincerely,

Janne G Gallagher

Harrison Wellford
Janne G. Gallagher
Counsel to the Grants and
Contracts Project

National Association
of Jewish Vocational Services
386 Park Avenue South, Suite 301, New York, NY 10016 (212) 685-9355

March 24, 1986

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Executive Director
Harvey P. Goldman

The Honorable Lowell Weicker, Jr.
Chairman, Committee on Small Business
United States Senate
Washington, D.C. 20510

Re: S. 2147

Dear Senator Weicker:

Thank you for the opportunity to provide testimony, for the record, to the Senate Small Business Committee on S. 2147, a bill to reauthorize the eligibility of sheltered workshops to compete on federal procurement contracts.

While I had requested the opportunity to present before the Committee, I understand from Ed Tiryakian that there were serious time constraints. I know that the needs of the community of persons with handicaps will be ably represented at the hearings by the National Industries for the Severely Handicapped (NISH) and others.

On behalf of the National Association of Jewish Vocational Services, let me thank you for your abiding interest in the needs of the handicapped citizens of our community and your strong legislative support for them.

If you require any further information, please let me know.

Sincerely,

Harvey P. Goldman
Executive Director

HPG:ebs

STATEMENT by

Harvey P. Goldman, Executive Director

NATIONAL ASSOCIATION OF JEWISH VOCATIONAL SERVICES

Before the Senate Committee on Small Business

on S. 2147

March 26, 1986

Mr. Chairman, Members of the Committee, I want to thank you for affording me the opportunity to provide this testimony to you. My name is Harvey P. Goldman and I am Executive Director of the National Association of Jewish Vocational Services. The Association serves as the coordinating body for the Jewish Vocational Service agencies and programs in the United States, Canada and Israel, which for more than 100 years, have been providing service to the community through a comprehensive program of employment, counseling and rehabilitation.

NAJVS and its agencies confront the major economic and social issues of our time, including joblessness, the resettlement of new immigrants, the needs of the hungry and homeless, home health care and nutritional programs for the elderly and infirm homebound, and intermediate care facilities and group homes for individuals with severe mental retardation and psychiatric impairments.

Over 11 million persons have been served in programs of the Jewish Vocational Service system. More than 200,000 individuals a year are now being helped by the network's programs of vocational assessment and evaluation, world-of-work adjustment training, retraining of displaced workers, upgrading for the changing demands of the primary labor market, supported employment, job placement and counseling and an array of supportive and community adjustment and living programs.

NAJVS is a network of front line agencies, each one affiliated and working with its local Jewish Federation and member agencies including family and childrens's service, community center, school, community relations council, hospital and nursing home. This network both at the local and national levels provides us with the strength, and much of the resources that enables us to be responsive to people in need.

NAJVS serves high school students and dropouts needing assistance in planning for educational and vocational career goals; young adults,

including recent college graduates and entry level economically disadvantaged who are unemployed or underemployed; primary wage earner adults unemployed or underemployed at all occupational levels of the labor market spectrum from unskilled, semi-skilled, blue collar job seekers to the recently unemployed executive and middle-manager and entrepreneur whose small business of many years has failed; woman returning to the labor market out of necessity; older adults who should be enjoying their retirement years but who now need additional income; individuals of all ages who have physical, mental and/or pyschiatric disabilities, many of whom have recently been deinstitutionalized after 10 to as much as 25 years in state schools and hospitals.

The network serves the industrially disabled through its Insurance Rehabilitation programs and is working closely with the private sector through its Corporate Services and Human Resources programs by providing on-line services to workers, businesses and industries effected by short-term economic conditions as well as the rapidly developing structural, long-term unemployment and productivity problems looming so threateningly before us.

Within these communities of need, individuals with severe disabilities are particularly susceptible to the changing currents of the economy while lacking many of the resources to cope with these changes. This need was acknowledged on November 28, 1983, when President Reagan proclaimed the National Decade of the Disabled (1983-92), thus signaling this nation's commitment to its 36 million disabled citizens.

Of this population of 36 million, as an example, there are approximately four million developmentally disabled; 1.8 million of whom are of working age. A major need of this group is for assistance in the successful transition from school to adult life. An average of 95,000 leave special education programs each year and five percent (5%) find employment; leaving over 90,000 in need of further assistance, including employment and employment-related services. Many are unable to enter the primary labor market upon graduation and require extensive rehabilitation and training as a first step.

An essential component of the rehabilitation process has been and always will be that of real, remunerative work in a variety of settings

which takes into consideration the individual's capacities, strengths and limitations and his or her potential in the world of work and assist that individual to acquire the necessary skills and work behaviors to meet the demands and opportunities occurring in the workplace.

It is precisely for these reasons that such programs as that of the National Industries for the Severely Handicapped (NISH) under the Javits-Wagner-O'Day Act are so vital to the people they serve. The NISH government contracting program works as well as it does because of a unique combination of a carefully wrought Congressional Act, the cooperation of the President's Committee, committed and competent rehabilitation facilities providing services and contracts to the federal government, a marvelous labor force which, with the help of the JWOD Act reaches beyond its limitations and the small businessman who supplies equipment, goods and support so that the work of the program can be accomplished. Everybody wins with this team effort of government, human service providers, consumers and private enterprise. The program benefits not only the person with a severe disability, but the federal agency whose facility is being cleaned and properly maintained by such persons, the rehabilitation agency which uses the contract as a mechanism to assist people to function in the work world and the supplier who sells the agency the soaps, waxes, machines,, pails and mops to get the job done.

Rehabilitation facilities, in order to do their job with persons with severe disabilities need the opportunity to avail themselves of more,and more varied work opportunities; a need to which S.2147 speaks. This bill to reauthorize the eligibility of WorkCenters to bid on Small Business Set-Asides would be an important step in helping to bring more of them into the government contracting system and would increase job opprtunities for the individuals whom they serve particularly at a time and as the result of legislation such as P.L. 94-142 which substantially increases the population to be served. Passage of S. 2147 would thus strengthen the continuum of service to people with disabilities by providing them with the opportunity for productive work.

Passage of S. 2147 would also put a cap of $50 million on participation of workshops in the set-aside program. At first glance that is a sizable amount of money which quickly pales when it is compared with the overall dollar amount of government contracts of almost $200 billion, or with the $33 billion in contracts awarded to small business in FY 1984. Even during the period FY '81 - '83, the last three years that workshops participated in the set-aside program, small business was doing over $80 billion with the federal government and over $37 billion under the set-aside program, while set-asides for workshops were under $10 million. It would be interesting to know how much of the money under the set-asides to workshops were used to purchase equipment, supplies, etc. from small business. In all likelihood, since these items had to be purchased by the workshop on the open market, the small business community derived some benefits from the efforts of the workshops and the needs of the individuals they served. And this is as it should be in a society which remains sensitive to the basic needs of its citizens and their right to lead productive lives.

"The highest degree of charity," in the words of Maimonides, is "To take hold of a man who has been crushed and to find work for him, and thus, to put him on his feet that he will not be dependent upon his fellow man".

Mr. Chairman, members of the Committee, thank you for letting me provide this testimony to you on behalf of what we at NAJVS believe to be a worthy bill.

AJVSP CHAILIGHTS

Association of Jewish Vocational Service Professionals

ChaiLights is a publication of AJVSP which is an affiliated professional association of the Conference of Jewish Communal Service
ChaiLights is designed and produced by Federation Employment and Guidance Service's Media Department

Fall 1984 **Vol. III No. 3**

A Message from Our President

by **Gerald H. Silverstein**
Associate Executive Director
Chicago JVS

In this our sixth year, **AJVSP** has much to be proud of as our organization continues to set the pace of leadership in the field of Jewish Communal Services. During this past year, we have held two successful conferences. **The AJVSP Practitioner's Conference,** in October of 1983 in Philadelphia, was attended by more than 100 members. AJVSP presented an excellent program last May in Los Angeles in conjunction with the annual meeting of the **Conference of Jewish Communal Service.** This allowed us to meet and hear from many of our West Coast members. We have also been privileged to participate in the development of a professional seminar each December as part of the **National Association of Jewish Vocational Services'** Annual Meeting. This enables us to discuss current issues with our lay and executive leadership.

Membership Chairman, **Vivian Pullan,** along with First Vice President, **Rachel Tannenbaum,** worked diligently during the year. **Claudia Fogel,** Treasurer, has kept us on an even keel and sees to it that our treasury remains in the black. **Gail Megaliff,** Second Vice President, continues to pilot **"Chailights,"** our excellent newsletter.

We are eager to fill vacancies on our Executive Board. **Barbara Nurenberg,** Past President and Nominations Chairman, will give a full election report in the next issue of "Chailights."

cont'd on page 9

Hats Off to Minneapolis

by **Larry S. Greenbaum**
Director of Vocational Services

Hats off to Minneapolis JVS! In December, 1983, JVS moved its rehabilitation facility, JVW, from a downtown warehouse location to a brand new modern facility at 1612 5th Street South, in suburban Hopkins, Minnesota. After moving the facility, the agency moved into a three-year accreditation from the **Commission on Accreditation of Rehabilitation Facilities (CARF)** which was awarded in July, 1984. Minneapolis JVS is the first JVS of a Jewish family service to join CARF.

"JVW's new facility far exceeds our fondest expectations," **Sid Levinson,** JVS board/committee co-chairman and **Jewish Family and Children's Service** board member stated. **Neil Meyer,** also on the JFCS board and JVS committee co-chairman, emphasized the countless hours which the board, committee, and staff dedicated to the move and CARF. **"Receiving a three-year accreditation on our first survey is an achievement of the highest order, of which we are all very proud,"** Meyer stated.

Moving to a brand new facility enabled JVS to design its 14,600 square foot space for rehabilitation, people and productivity. Minneapolis JVS has received commendation from the **Minnesota Council on the Handicapped and CARF** for the facility's safe, accessible design which provides many conveniences for the handicapped.

Executive Director, **Irving Nudell,** who has fathered JVW since its beginning in 1958, expressed, **"We all feel elation and pride in JVS's new image and the dignified, cheerful work setting it provides to handicapped individuals."**

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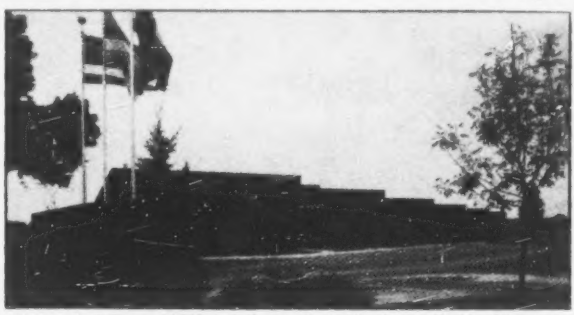

Minneapolis JVS' new 14,600 sq. ft. facility, located in suburban Hopkins, Minnesota.

Employment

Metro N.J. Expands Services to Refugees

by **Morton A. Schwartz**
Coordinator of Emigre Service

At the invitation of the **N.J. Department of Human Services, Division of Youth and Family Services (DYFS), Metro JVS** in November 1983 submitted 2 proposals - one for **ESL classes to N.J. Department of Education** and one for **Vocational Services to DYFS**, for ORR funds being channeled through DYFS. Both were accepted enabling the JVS to provide 2 ESL classes serving refugees in a four county area and a Comprehensive Vocational Services Program including Assessment, Counseling, Job Seeking skills Group Counseling, Placement, and Follow-up. These grants will enable the JVS to maintain a high quality of service not only for those Jewish refugees resettled in these areas but for many other groups as well. The current ESL classes are mini-UN with students from **the USSR, Poland, Roumania, Hungary, China, Vietnam and Haiti** (these Haitian clients are being served through a contract with the Essex County JTPA). With the ability to serve refugees outside of its **Federation Area**, Metro JVS can now assist over six Jewish Family Service agencies in their resettlement programs. Those grants have allowed Metro to keep intact its emigre service department so that if the political climate softens with the USSR, JVS will have an ongoing program in which to receive any new Soviet Jews without start up program delays. ▪

Columbus' Unique Job Club Expands

by **Dr. Earl Yaillen**
Executive Director

Jewish Family Service (JFS) attempts to be flexible and ready to meet changing needs. That was proven recently when the staff and Board of JFS realized that the agency's special expertise in career and vocational counseling could be used to help people during the recession.

A long waiting list for our Vocational Services resulted from so many people being unemployed. Therefore, a special grant was requested from the **Columbus Jewish Foundation** in order to help these people.

The grant has enabled the **Job Club**, a unique group program, to be initiated. The program was designed for people on the waiting list. As the waiting list diminishes, other people become part of the Job Club program.

No other family agency in the Columbus community has a Vocational Services Department and, therefore, JFS submitted a grant proposal to the **United Way**. United Way funding has enabled the Job Club program to be expanded so that the total community can benefit from our agency's special expertise.

All United Way family service agencies, which includes **Family Counseling and Crittenton Services, Catholic Social Services and the Urban League**, make referrals to the Job Club program. The Job Club program director and other JFS staff meet the clients at those agencies.

This program is a special one-year project which began on January 1, 1984. The program is a good example of our agency's commitment to meet needs as they arise, and assure that duplication of services does not occur. ▪

FEGS Coordinating Refugee Retraining

by **Kathy Cohen**
Supervisor

Since the 1970's when Soviet emigration to the U.S. reached unparalleled heights JVS' have played a major role in providing a myriad of counseling, language, employment preparation, training, and support services to Russian Jews to assist them in becoming economically independent, vocationally and personally satisfied.

1984 was a milestone in this spectrum as the first participants of **FEGS' Refugee Health Retraining Program** graduated. Funded through the **U.S. Office of Refugee Resettlement, the Federation of Jewish Philanthropies of New York, the Jewish Communal Fund, the Baron de Hirsch Foundation, and FEGS**, this unique program, administered by **FEGS** in cooperation with the **NYC Board of Education** and **Beth Israel Medical Center**, will train and prepare refugee nurses for employment as LPN's in New York. There has been an extensive amount of coordination and planning to assure that these individuals will have the most up to date clinical and educational skills to enable them to pass the NYS Licensing examination and secure employment at major hospitals in New York City. The nursing shortage is acute, the employment needs of the refugees critical, and the combining of funding of the only project of its kind is a goal FEGS is proud of. ▪

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Employment

Cleveland's 'Sales to Success' Program Soars

"The sales training program did it - really helped turn things around for me."

"I thought I could do well in sales, but the course really provided the structure, the framework to put a lot of bits and pieces into an organized whole. Now I am confident that I can do a great job."

Allen Sobul is one of many success stories in **Cleveland Jewish Vocational Service's** new sales training program. More than half of the first class of 25 started working even before the eight-week training ended.

Executive Director Robert Cahen noted that JVS has many clients like Sobul who are well educated and skilled but had been dislocated because of economic conditions. Ironically, while these clients desperately searched for jobs, employers' calls for sales people were often not adequately met.

"Our unique sales training program is helping to bridge that gap," commented **Annette Segall** who developed the program. "It's a wonderful opportunity for dislocated workers. If they have good communication skills and positive, outgoing personalities, they might do very well as professional sales people."

" We limit the program to those who are at least 35 years old because they have relatively few training opportunities in the business world. Our training in persuasive communication/sales is applicable to virtually any activity which involves people. And the opportunities in sales are intriguing. They range from Wall Street securities to automobile engines; from scrap metal to jewelry."

"This program, which includes intensive job search skill training, helps people take control of their lives with career options which are viable for years to come. Good sales people are always in demand, regardless of their age and shifts in the economy," observed Segall.

"Sales are the heart of all business activity. When sales increase, there is a ripple effect. The whole economy grows. Eventually more jobs are generated. Everyone wins - the trainees, the employers who save time and money by recruiting trained sales persons, the entire community."

Jack Gubkin, veteran professional sales trainer for the local **Chamber of Commerce** and many corporations, conducts the eight evening workshops. The program is supported by a **Job Training Partnership Act grant.**

Staff and class of the Cleveland JVS' successful "Sale to Success" sales training and placement program.

Boston Awarded Grant for Older Workers Program

by **Marian Mostovy**

Jewish Vocational Service was recently awarded a **Job Training Partnership Act Older Workers Grant of $35,000** to develop part-time job opportunities for workers age 55 and older in 12 towns south and west of Boston.

The goals of the program is to work with business to expand the number of employment opportunities for the economically disadvantaged older worker, particulary flex-time, permanent part-time, job sharing or "mini-shift" positions. It is anticipated that 100 new jobs will be created over a one-year period beginning this September. The program also aims to increase employer awareness of the advantages of hiring older workers.

"Although the main reason those in the 55-and-over age bracket seek jobs is economic survival, work also fulfills the need to keep active and maintain self-esteem," said **Barbara Rosenbaum**, executive director of JVS. "But the unemployed older worker faces barriers of age discrimination, lack of job search skills and inflexible employment practices. Lack of job experience and transportation may also present major problems to this group.

The new job development program will complement **JVS's Elder Employment Service Program**, sponsored by **West Suburban Elder Services**, which provides professional job counseling and placement services to the suburban area west of Boston.

The one-year demonstration grant was approved by the **Massachusetts Executive Office of Economic Affairs** and awarded by the **Metro South/West Employment and Training Administration** (formerly Norweed CETA). Combined **Jewish Philanthropies** will also provide partial funding for the program.

Career & Ed. Counseling

FEGS Offers Certificate Program in Adult Career Counseling

In a time of economic uncertainty, new social practices, and rapidly advancing technology, career development planning becomes a critical factor in establishing and enhancing one's professional life. This situation has led to an increased need for specially trained professionals equipped to help individuals clarify career goals and facilitate career decision making.

Accordingly, **Queens College**, part of the **City University of New York** and **Federation Employment & Guidance Service** will offer a certificate course in **adult career counseling** this fall. The students, limited to master's degree holders, might already be working in the counseling business, with graduate degrees in psychology, sociology or other pertinent specialities.

According to **Queens College**, the program is the first in the country. **Rene Zarin**, associate director of the college's continuing education program, said: **"We want to develop this program as a model that can be replicated at other universities. There is a great need. The idea is to train the trainers."**

Barry Lustig, director of **FEGS' Professional Development Institute** and coordinator of the Queens College program, estimates that there are 5,000 professional counselors altogether, mostly with master's degrees, who give adults advice about careers.

It is easy to understand why the need for more expert career counseling has arisen. Years ago, few people changed careers; instead, they tended to spend a lifetime with the same company or at least in the same work area. If they did receive career advice, it probably came haphazardly from parents, friends or from college vocational offices.

Not so today. Technological change has made more flexible and intensive career planning necessary. Loyalty to one company has given way to desire for better opportunities. In addition, people are living so much longer that a second career is becoming not only feasible but sometimes financially essential as well. And companies are dismissing or laying off people more readily at the first indication of a financial pinch.

Some companies offer their displaced workers the chance for outplacement help. Outplacement specialists are paid by the companies to help the workers market themselves for jobs and to help them face the emotional crisis of a job loss or career switch. In fact, much of the demand for better trained career counselors is coming from the fast-growing outplacement industry.

The new program, conducted at **FEGS' 114 Fifth Avenue** offices will start **October 24th.** The program consists of three six-week modules and a 12-week module, held two nights a week-Monday and Wednesday, 6 o'clock to 10 o'clock. Courses include **"Personality Dynamics and Internal Barriers"** and **"Style and Career Compatibility."**

It will take about a year and a half to complete the 12 courses required, plus internship. The program has received inquiries from several hundred individuals across the U.S. and as far as London.

For additonal information contact:
Barry Lustig, Program Coordinator
FEGS
510 Sixth Avenue (4th fl.)
New York, NY 10011
(212) 741-7150

Chicago: Whither Executive Opportunities?

by **Hunt H. Unger**

Where executive career planning is concerned, a lot of attention is being given to the glamorous high-tech industry which is perceived to change the American industrial/business landscape into a giant Silicone Valley. Nothing could be further from the truth. There is little doubt that computer science will have a profound impact on almost all industries. However, the great bulk of tomorrow's career opportunities will be generated by three non-high-tech industries.

The number one job and career producer will be health care, especially in the areas of disease prevention/control, mental health, eradication of catastrophic illnesses, fitness, nutrition and senior citizen care.

The number two employment provider will be found in the helping industries, such as social service work and education. Where the educational arena is concerned, we are not talking so much about traditional college education -- career opportunities here at best, will remain static -- but upgrading of skills for displaced workers due to foreign competition on the one hand, and on the other, adult education which will help workers with obsolescent skills to stay modern and competitive.

The third major source of work opportunities will be generated by ever growing leisure activities, especially in the high rolling amusement and recreation industry. Businesses, such as travel/transportation, hotels, motels, trailer parks, theme and animal parks and others will offer greatly needed job opportunities

cont'd on page 5

Career & Ed. Counseling

Baltimore's College Fair

by **Susan M. Kolodner**
Program Director

The **College Fair** recently sponsored by the **Associated Placement and Guidance Service** attracted over two-hundred college-bound high school students and their parents. Representatives from forty-three colleges and universities nationwide including Duke, Tulane, Ithaca, University of Pennsylvania, Harvard, and Washington University, were on hand to field questions.

The **College Fair** was a public event of a newly established program of **APGS, the College Guidance Service.** The **College Guidance Service** provides professional assistance with college selection to Jewish high school students and parents. The program offers private counseling, testing, the use of a computerized information data bank, financial aid and scholarship information, assistance with admission procedures and information on Jewish life on campus.

Being the vocational agency of the Federation, career planning plays an integral role in the **College Guidance Service.** Since the link between careers and a college education has become an important factor in today's economy, students are interested in learning about how career options relate to their own skills, aptitudes and interests.

The **College Guidance Counselor, Esther Birnbaum,** provides personalized, in-depth assistance to students that is often not accessible to the Jewish community beyond what is available through the high school guidance counselors.

The program was implemented in January, 1984, and is funded for a year through a grant from the **Aaron and Lillie Strauss Foundation.** Program participants are charged a fee for service based on family income and ability to pay.

The **College Guidance Service** is successful in assisting students with their college choices through the ongoing services of the program and through special events like the College Fair and College Tours. ●

Chicago: Opportunities (cont'd from page 4)

to middle management persons and non-skilled workers because they are high labor intensive.

Finance will also play a significant role in providing new career opportunities, especially in forecasting, financial planning and trading. But the gains in opportunities will be offset by loss of jobs due to computerization; i.e. bank tellers can be expected to disappear in the not too distant future.

In sum, the sophisticated vocational counselor will do well to study the trends in the aforementioned industries and not become mesmerized by the high-tech mystique.

Louisville's "Study Strategies"

by **Robert Tiell**
Director Vocational Unit

Louisville Jewish Family & Vocational Service recently conducted its annual pre school-year workshop: **"Study Strategies for Success in School."** This 4 session, 2 hours/session workshop is designed to help students develop better study and time management skills and increased academic effectiveness. One level of the workshop is geared toward middle school students: focuses on poor study attitudes, parent and teacher directed hostility, and peer pressure; and effectively uses group exercises and discussion to diffuse student frustration and anger. The second level is geared toward more highly motivated, upper level high school and early college students: focuses on specific study and time management skills; and deals primarily with "nuts and bolts", non-affective issues. Twenty-five students participated in the $40 course and evaluations were positive.

Louisville JFVS offered **"Study Strategies for Success in School"** as a lead off to an entire series of career and college programs for 1984-85. Other programs to be offered in the near future include the **"SAT/ACT Preparation Course"; "College: All the Right Moves"; a "Resume Preparation"** workshop as part of JFVS' ongoing Career Effectiveness Training; **"Women: The Challenge of Change"; and "Career Encounters of a Different Kind"** a novel and futuristic look at new and emerging careers.

JFVS is also exploring ways to offer **"Study Strategies"** as a regular supplement to its educational and vocational evaluation services. ●

Rehabilitation

Cincinnati: Academics for Employment

by **Rosalie Weiser**
Vice-President

John, a disabled young man working with the Bureau of Vocational Rehabilitation, was having trouble filling out job applications. His spelling was poor, errors numerous and his handwriting illegible. He was referred to **Jewish Vocational Service-Academics for Employment** and three weeks later, had resumed his job search able to fill out his applications with 100% accuracy and neatness.

Paul, another disabled young man, wished to enter a Building Maintenance training program to better his chances of employment. Three training programs, however, required 6.0 grade levels in reading and math and his levels were 5.3 and 4.6 respectively. Eight weeks after admission to **JVS-Academics for Employment**, Paul's reading level was post-tested at 7.0 and his math level at 6.9, enabling him to proceed with his vocational plans.

Clients such as John and Paul have had an increasingly difficult time competing in both a shrinking and a more demanding job market. **Academics for Employment, JVS's** newest rehabilitation program, was established to arm these clients with those academic skills needed for their vocational choice, thereby making them better able to compete.

Targeting academic training to the individual's vocational choice is not the only difference between **JVS-Academics for Employment** and other Adult Education programs. All instruction, materials and techniques are geared to the individual's preferred learning channel which is determined with a learning skills assessment that explores the person's perceptual strengths and weaknesses in the auditory, visual, tactile and kinesthetic areas. An individualized plan might include taping all text for the auditory learner or using sandpaper letters, words and sentences for the individual who needs a tactile approach.

Curriculum taught may include such things as a sight word vocabulary for the janitorial trainee, simple addition for a hopeful waitress, GED preparation or tutoring in Algebra for the engineering student. Staff from Academics for Employment go the actual job sites, training and school programs to determine the specific academic concepts that will be needed by the individual to perform successfully on the job or in a classroom. Such job-targeted, individually delivered academic training is providing an expedient quality boost to the disabled person's total vocational rehabilitation planning and programming.

Supplying the Academic training, the staff of JVS-Academics for Employment represents a variety of disciplines with combined experience in Vocational Rehabilitation, Special Education, Adult Basic Education, Educational Assessment, Work Adjustment and Work Evaluation.

Funded in part by an **Ohio Rehabilitation Service Commission Establishment Grant, JVS-Academics for Employment** was established in 1983. In order to meet more individuals' schedule needs, part-time and full-time programs are available as well as evening training hours. Applicants should be at least 16 years of age, able to provide for self-care and transportation and be deficient in an academic skill that is required for the person's vocational goal. Admission to the program is determined by the potential evidenced during the initial assessment and interview.

For more information about this program, contact **Bonnie Perkins** or **Buster Newton, JVS-Academic for Employment**, 18 East 4th Street No. 810, Cincinnati, Ohio 45202 or call **(513) 381-4458.**

Philadelphia Introduces New APTICOM Model

by **Jeanette Hutter**
Public Information Specialist

The Vocational Research Institute, a division of the **Philadelphia Jewish Employment and Vocational Service**, recently introduced a new model of **APTICOM. APTICOM** is the desk-top microcomputer which VRI developed to assess cognitive, perceptual, and manipulative aptitudes. The new A3 model of **APTICOM** also offers: an interest inventory; color-coded test panels which differentiate the aptitude and interest test batteries; and a Finger/Hand Dexterity Module which measures finger and hand dexterity. Decreased administration time has also been designed for the new model.

"**APTICOM** provides an accurate and convenient method of developing an individualized profile of a client's employment potential," said **Dr. Ephrain H. Royfe, Director of Philadelphia J.E.V.S.** "It provides personnel administrators, vocational evaluators, and counselors with reliable information on job-related aptitudes and interests which is invaluable in placing employees and in choosing occupations and training programs."

For more information on **APTICOM**, write the **Vocational Research Institute** at 2100 Arch Street, Philadelphia, PA, or call **(215) 496-9674.**

Rehabilitation

ALTRO Launches Capital Campaign

by **Amy Paulin**
Development Coordinator

The delivery of relevant rehabilitation services requires that an agency's capital plant and equipment are at par with the state-of-the-art in analogous industries. With increasing pressures on operating budgets, this becomes significantly more difficult.

In September 1983, a number of key trustees at **Altro Health and Rehabilitation Services** began the process of reaching for the future by forming a committee to begin a capital funds campaign. After careful review of the needs, the goal that was agreed upon was **one-million dollars.** It was further agreed that the Board was to solicit itself as the first phase of that effort. To date over **$450,000** has been raised.

This campaign resulted from a self-study conducted by the Board of Directors in 1982. After reviewing the agency's goals and objectives, a plan was designed to bring the agency into the twenty-first century. Several of the recommendations addressed the need for additional vocational training and classroom space, psychiatric social worker offices in closer proximity to training sites, space availability for research projects and expansion of service-oriented vocational training programs.

Recognizing the importance of these recommendations, it was decided that funds would be used to expand or develop programs in institutional food services, computer services, retailing and mail order merchandising. Funds will also go toward relocating many administrative and clinical offices.

The response from the board and staff has been enthusiastic. They have endorsed this project by contributing time, skills and financial support. In a little more than a year, the Campaign has reached almost half of the goal.

An interesting and exciting component has been the staff aspect of the campaign. Staff should be especially commended for their participation. Recognizing the impact the expansion and renovation will have on the agency's ability to serve clients, they have organized a staff drive and to date have raised over **$40,000**. Both the **Federation of Jewish Philanthropies and the United Way/ Greater New York Fund** has supported this capital effort so that the next phase of the campaign can reach beyond the **Altro** family and into the larger community.

Philadelphia Provides Physical Therapy Treatment

by **Bruce S. Bobbins**

As 68-year old Sam Blender comfortably sits behind the register in the cafeteria of the **A.P. Orleans Center** counting change for the patrons, he also counts his personal good fortune. Six months ago, he not only didn't have this job but, because of a stroke, was a patient in the intensive care unit of a hospital.

"Two months ago, I had trouble walking half-way around the Center. I'd be huffing and puffing and I'd be all out of breath," Sam excitedly explained. "Now, I can go three full times around so I guess you can say I'm in pretty good shape."

Sam owes his remarkable recovery to his drive to "work again" and to **Debbie Rasansky**, the physical therapist at the **Orleans Center**, who was determined to help Sam fulfill his goal.

Riding a stationary bicycle to build up his endurance, Sam exclaimed that "Debbie is one tough little woman. She doesn't let me cheat on any of my exercises. It's for my own good."

With Sam reclining on a treatment table and Debbie slowly stretching his legs and using resistive motion to strengthen his muscles, she explained that it was important in Sam's case to have him walk without any devices such as canes or walkers. She feels he is doing marvelously and happily notes that he even drives himself to the Center for treatment three times a week.

Sam's treatment, which was specifically designed for him by his physician, also includes the use of pulleys to build up strength and walking along side parallel bars to increase his coordination. In addition, Sam has a series of exercises to do at home.

Before his "sickness," as he refers to the stroke, Sam, a retired head of a shipping department, wished to remain active and answered an ad as a part-time courier for the Jewish Employment and Vocational Service, of which the Orleans Center is a branch. Following that assignment he was offered a promotion as full-time purchasing agent at the Orleans Technical Institute.

"Then came the day," Sam said, his voice softening, "I didn't know if I'd work again. I didn't know what would happen."

He underwent both occupational and physical therapy, as an in-patient, at Moss Rehabilitation Hospital, which like **J.E.V.S.**, is a constituent of the **Federation of Jewish Agencies** supported through the **United Way**. He continued his therapy at the Center because of its proximity to his home.

Under Ms. Rasansky's guidance, Sam will receive treatment at the Center for a few more weeks before he is discharged.

(Note: The Center provides physical therapy for clients who have had strokes, undergone operations, or have any illnesses, such as arthritis, that requires such therapy.)

Rehabilitation

Miami's Nutritional Project Enters the Computer Age

by **Sally Leonor**
Administrative Secretary
Pamela Tarquinio
Assistant Director

There's a new addition to the **Jewish Vocational Service Nutritional Project** located on **Miami Beach** - A Radio Shack **TRS-80 Model II Computer.** The computer was installed in December, 1983, and will facilitate all recordkeeping, planning and programming activities for the project.

The **JVS Nutritional Project** has been in existence since 1973, and currently provides hot Kosher meals and social services to approximately 1800 elderly residents of Miami Beach and North Miami Beach on a daily basis. Due to the volume of meals prepared, numbers of clients served and types of reports required by various funding sources, the record-keeping necessary for the operation of the project has grown to be an enormous task. The computer will greatly help the project staff by providing the means to maintain efficient, accurate and timely information which is needed to effectively manage the project.

The Computer system is being implemented in 3 phases:

DATA MANAGEMENT: client services and programmatic information;
FISCAL MANAGEMENT: grant information and accounting procedures; and
KITCHEN MANAGEMENT: food inventory control and meal preparation.

In addition to generating reports for various funding sources, the computer can provide a variety of other types of information including age analysis of clients, lists of homebound meals routes, attendance sheets for congregate meal sites, forms for office use, and labels for frozen meal containers.

The **JVS Nutritional Project** has moved into a new era with the installation of this computer. We are very fortunate to have had both the full cooperation of our Board of Directors and the total commitment of our staff in this endeavor. We know that by improving the management capability of our project we will ultimately be providing better service to our clients - and this, of course, continues to be our primary interest.

Personal Recollections

by **Theodore Weiss**
Food Service Supervisor

I came back from Concentration Camp in 1945 to my hometown, Kesmark, Czechoslovakia. The city went through a series of catastrophic events: the deportation of all the Jews to Concentration Camps; the Partisans fighting the Nazis in our city; German Occupation; Russian Occupation.

Only a handful of Jews came back after the Second World War. There were very few families. Children were wandering the streets, looking for food and a place to sleep. Our small congregation called a meeting and I came up with a plan to establish a **kosher Peoples Kitchen** where all our homeless could eat. Almost everybody at the meeting was against my idea because there was no meat, no fish and it was very hard to get food or supplies.

After much discussion, I was left with one supporter, Mandel Berger.

At last, we succeeded in establishing a **Kosher Pareve Kitchen**. It was a big success, beyond our expectations.

Many residents and travelers who went through our city, enjoyed our help and hospitality in the post-second World War years.

At the **JVS Nutritional Project in Miami** our first meal site was 10 years ago.

The first people we registered for the hot meal program were uncomfortably shy, sitting down to a meal they did not prepare themselves or pay for. It took some convincing to make them realize that this is not charity. The program is theirs.

Some of our participants were very hostile, bitter, unhappy people, always ready for an argument, pushing and fighting. But most of them were good people, very thankful, appreciative, with colorful life experiences.

As time passed, I became more and more attached to these proud, warm-hearted people.

The Nutritional Project grew very fast. We opened one site after another.

People used to tell me: **"This is the best thing that happened on Miami Beach. Now we have a place to go for a good kosher hot meal. This is our second home"** and jokingly they added **"and we do not have to wash the dishes."**

At present we serve at eight sites, 1800 people, Monday through Friday, 253 days a year. The people know, rain or shine we never fail to serve the meals. Our part-time staff and volunteers are of the same age group as the participants. The volunteers are very happy and glad to keep active and productive in their retirement years. Many of our participants, volunteers and staff have found good friends and some even found spouses for life-time companionship.

I am very proud to be associated with the JVS Nutritional Project. To me it means more than a job, it is a study of Human Nature, Human Behavior and how to be human.

Rehabilitation

ALTRO's Residential Services

by **Peter Murphy**
Director of Residential Services

In July of 1984, **Altro Health and Rehabilitation Services** inaugurated its **Residential Services Division** with the opening of the first of three community residences on Ward's Island. These facilities represent the culmination of two year's joint planning between Altro and the New York State Office of Mental Health, and launches the agency into an area of service advocated by a Board Special Committee on Agency Mission in 1982. The three residences, **Newharbour, The Anchor, Bridgehaven,** designated collectively as **Altro Riveredge Community House (ARCH),** provides 24-hour supervised residential care to a total of sixty persons.

The fundamental concept of Altro Riveredge Community House (ARCH) is very simple - to provide quality residential care as one component of a coordinated and comprehensive service system for the rehabilitation of the psychiatric client. It serves as a temporary harbour, a safe port where the client can come to terms with a life which has been interrupted by a disabling mental distress. Ultimately, ARCH is the bridge back into the community from which the client came, and in which he/she belongs.

Residents of ARCH are also able to utilize the resource-rich environment of Altro Health and Rehabilitation Services for a spectrum of their service needs, including comprehensive evaluation, day programming, outpatient clinical care, vocational rehabilitation, sheltered workshop settings, educational programming, advocacy and case management. The provision of this network of services, with the associated residential component, under the umbrella of one agency, actualizes the idealized model, classic of mental health services delivery. ■

ALTRO Bridges the Technological Gap

by **Robert Lazow**
Project Director

Altro Health and Rehabilitation Services is the recipient of a three year **Rehabilitation Services Special Project Grant** from the **United States Department of Education.** Entitled **"Bridging the Technological Gap,"** this special project is designed to develop a model for the use of new sophisticated computer technology in increasing the employability of the psychiatrically impaired. With a first year award of $142,000, Altro will be surveying and adapting specialized software as part of an overall vocational rehabilitation effort for a population suffering from chronic psychiatric disorders. During the second and third year, the Agency will be undertaking field tests of this model to refine it, measure its effectiveness, and disseminate the demonstration's results to rehabilitation centers throughout the country.

Altro Board President, Alan S. Jaffe, stated, "We are all extremely pleased with this award. It follows a highly competitive process in which the Department of Education sought innovative projects which could make a significant contribution to state-of-the-art rehabilitation. The project enables Altro to continue this seventy year tradition of leadership in the field while providing our clients with the benefits of computer technology."

Cleveland's New Hospital-Based Program

JVS Cleveland recently implemented a hospital-based vocational rehabilitation program at Cleveland's Mt. Sinai Medical Center.

Robert Cahen, JVS Executive Director, stated that "the program is aimed at meeting the employment-related needs of patients who, because of illness or injury, appear not to be able to return to the kind of jobs that they previously held. It brings to bear the skills of vocational rehabilitation counselors, physical and occupational therapists, social workers and physicians and aims to aid clients in gaining new skills, modifying work environment and ultimately in gaining appropriate employment."

The program is funded through a grant by the **Council of Economic Opportunities in Greater Cleveland** and will be implemented by Eva Tinianow, a highly regarded and recognized vocational rehabilitation expert with many years of experience in direct service and administration of hospital-based vocational rehabilitation services.

Dr. Cahen concluded that "the program is a model of cooperation among various types of professionals and among several institutions. It certainly demonstrates this community's commitment to delivery of quality services". ■

President's Message (cont'd from page 1)

I am pleased to report AJVSP will form regional conferences. This will afford an opportunity for more of our members to participate in professional programs and meet other JVS professionals. You will be hearing more about this from our Regional Conference Committee.

I want to take this opportunity to say "thanks" to so many of you who have been helpful to me and to AJVSP. The coming year will be a busy one. I would like to hear from you and welcome your input. We must work together to assure the strength and continuing vitality of our Association.

Ron Coun has been appointed Program Chairman for the **1985 CJCS Conference,** a position we know he will fill with distinction.

ChaiLights

Montreal JVS: An Overview

by **David Mendelson**, M.Sc. (Appl.)
Supervisor of Career Counseling

In 1985, **JVS** will be completing 40 years of service to the **Montreal Jewish community.** As a community vocational guidance agency, JVS is one of a family of agencies operating under the umbrella of **Allied Jewish Community Services,** the central fund raising and coordinating body of the Montreal Jewish community. The objectives of the agency are reflected in its services, all concerned with the educational and vocational planning and adjustment needs of members of the community: **Employment Counselling and Job Placement, Educational and Career Counselling,** and a **Rehabilitation Service** for the handicapped. The Youth Retention Project is the newest development in the agency to help recent university graduates find employment and thereby encourage them to remain in Montreal.

A comprehensive program of educational and career counselling emphasizes preventing problems by reaching people as early as possible to help them make important decisions about school and careers at a time when the world of work is becoming increasingly complex. This past year, 729 individuals were served through career counselling. Eighty percent of these clients were under 35 years of age, more than two-thirds of this group consisting of young people in their teens and early twenties. A significant number of requests was also met from people over the age of 35, who found it necessary to reappraise long-held career values and goals.

JVS also has a long history of serving the many **Jewish Day Schools** in the Montreal area. In the past year, 465 students in 11 **Jewish Day High Schools** received group guidance and testing services.

Other JVS specialized services include, job search skills workshops for recent university graduates and graduating students as well as other members of the community in need of employment.

Extensive outreach in the community was engaged in during the course of this year, highlighted by a career conference: **"Career Encounters of a Different Kind,"** focusing on new and emerging trends in careers, with growth potential in Montreal.

Close to 4000 people were served by our **Employment Counselling Department** during the past year of whom close to 1000 were placed in jobs.

While immigration to Quebec has been on the decline, several hundred North Africans and Russian clients were among those served.

Approximately 1000 applicants were identified as older workers, ie., over 45 years of age, who traditionally have more difficulty finding employment, especially in a tight labour market. An **Industrial Advisory Committee,consisting** of JVS Board members provides valuable job leads and assists in a **Student Self-Help Program** to help young people create their own businesses for the summer.

JVS' Sheltered Workshop currently serves more than 70 Jewish disabled clients who are unemployable in regular industry due to their physical, emotional or intellectual disabilities. This program is particularly unique in our community since it serves an exclusively Jewish population. Sheltered Workshop services enable the Jewish disabled to feel that they are productive members of our community. Major Jewish festivals are an occasion for celebrating together. A special program includes a **Sukkah** for our clients which is truly unique. We believe strongly that, through our workshop programs, we are able to preserve the dignity and integrity of the Jewish clients served and to fulfill the highest level of **"Tzedakah"** by helping our fellow Jews to self-sufficiency.

NAJVS Reports

The National Association of Jewish Vocational Services and **Federation Employment and Guidance Service** are assisting the **United States Government** and the **State of Israel** in helping to plan for the implementation of the **Memorandum of Understanding for Cooperation in the fields of Social Services and Human Development.**

In **May, 1984,** as the result of discussions between the **U.S. Department of Health and Human Services** and **FEGS, FEGS** allocated funds to enable **Dr. Yehuda Schiff, Director, Rehabilitation Services Administration** for the State of Israel to attend a series of meetings in the United States with HHS and to visit facilities in the New York area.

Several weeks later, in June, at the suggestion of **Mark Talisman, Director, Washington Action Office of the Council of Jewish Federations,** the U.S. Office of Human Development Services of HHS contacted **Harvey Goldman** to plan for **Dr. Schiff's** National Tour. As the result, **NAJVS** is sponsoring Dr. **Schiff's** trip from New York and Washington, D.C. to the West Coast, where he will visit **JVS's** and other facilities in **Los Angeles** and **San Francisco. NAJVS,** in cooperation with its affiliates is providing the funds to cover the cost of the trip.

FEGS, NAJVS and its affiliates are most pleased to participate in this historic agreement between the two nations and look forward to a productive series of meetings and experiences during **Dr. Schiff's** stay which we know will be constructive and of great benefit to the United States and Israel.

Hats Off (cont'd from page 1)

Many of the agency lay leaders lent their personal expertise to locating and designing the space and negotiating with the building management. They were joined by the **Hopkins fire marshall, the Metropolitan Transit Commission, the Council on the Handicapped, the City of Hopkins, and the building management** and their architects who helped assure that all safety evacuation, architectural design, and transportation issues were considered. **"The long search coordinated with all involved was an exciting and fulfilling challenge, which ended in an ideal facility,"** Larry Greenbaum, director of vocational services, expressed.

This has all been topped by the agency's three-year CARF award. JVS' board staff extends it's gratitude to **Harvey Goldman** and the **National Association of Jewish Vocational Professionals** for the strong guidance and direction that NAJVS provided the agency throughout CARF preparation. Sid Levinson further conveyed the board's feeling that, **"The CARF process brought the board closer to NAJVS and the JVS field as a whole."**

Congratulations

Congratulations to **Joseph Weinberg, Executive Director of the Jewish Vocational Service,** who has received the **Citizen of the Year Award** from the **New Jersey Psychological Association.** The award honors a state resident for outstanding contibutions to the mental health field. ▪

Awards

Gail Magaliff, Associative Executive Director, Federation Employment and Guidance Service will be a recipient of the **1985 Sam and Rose Hurowitz Award** presented by the **Commission on Synagogue Relations** of the **Federation of Jewish Philanthropies of New York** in recognition of contributions to Jewish communal service. ▪

From the Editor

Chailights, which publishes articles from JVS affiliates across the Unites States, Canada and Israel, is distributed to major Jewish organizations and media publications throughout the country.

Further information about programs may be obtained by contacting the specific agency or the Editor.

For the **February '85** edition, articles must be received by **December 1, 1984** and should be a maximum of **300 words.** Send material directly to:

Gail A. Magaliff
Associate Executive Director
Federation Employment
& Guidance Service
114 Fifth Avenue, 11th Floor
New York, NY 10011
Telephone: (212) 741-7003

Gail

Thank you
Gail A. Magaliff, NYC

Individual Membership Application

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Check One: Please send my mail to ☐ Agency address ☐ Home address
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SIGNATURE: _____ Check enclosed for: _____

Payment covers annual membership in the Association of Jewish Vocational Service Professionals and the Conference of Jewish Communal Service for the Membership year July 1st to June 30th.

Please make check payable to: The Association of Jewish Vocational Service Professionals and mail to: Vivian Pullan
JVS, 74 Tycos Dr.
Toronto, Ont.
M6B 1V9, Canada

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Atlanta, GA 30309

Baltimore APGS
5750 Park Heights Avenue
Baltimore, MD 21215

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Belvedere Avenue at Greenspring
Baltimore, MD 21215

Boston JVS
31 New Chardon Street
Boston, MA 02114

Buffalo JFS
70 Barker Street
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1 South Franklin Street
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1660 Sternblock Lane
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4250 Woodward Avenue
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111 Prospect Street
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Kansas City JVS
1608 Baltimore Avenue
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Los Angeles JVS
6505 Wilshire Boulevard, Suite 303
Los Angeles, CA 90048

Louisville JFVS
3640 Dutchmans Lane
Louisville, KY 40205

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318 N.W. 25th Street
Miami, FL 33127

PAST PRESIDENTS

Ronald I. Coun
Metro West, NJ

Barbara Nurenberg
Detroit, MI

Milwaukee JVS
1309 N. Milwaukee Street
Milwaukee, WI 53202

Minneapolis JFCS
811 LaSalle Avenue
Minneapolis, MN 55402

St. Louis Park JVS
6715 Minnetonka Boulevard, Suite F
St. Louis Park, MN 55426

Montreal JVS
5151 Cote St. Catherine Road
Montreal, QUE H3W 1M6
Canada

ALTRO Health & Rehabilitation Services
40 East 30th Street
New York, NY 10016

Federation Employment & Guidance Service
114 Fifth Avenue
New York, NY 10011

NAJVS
386 Park Avenue South, Suite 301
New York, NY 10016

NYANA
225 Park Avenue South
New York, NY 10003

Philadelphia JEVS
1624 Locust Street
Philadelphia, PA 19103

San Francisco JVCCS
870 Market Street, Suite 872
San Francisco, CA 94102

St. Louis JEVS
1727 Locust Street
St. Louis, MO 63103

St. Paul JVS
1821 University Avenue, Suite S-369
St. Paul, MN 55104

Toronto JVS
74 Tycos Drive
Toronto, ONT M6B 1V9
Canada

Rehabilitation Workshops, Inc.
Yehuda Hayamit No. 57
Yafo, Tel Aviv
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GOODWILL INDUSTRIES OF AMERICA, INC.

EXECUTIVE OFFICES • 9200 WISCONSIN AVENUE • BETHESDA, MARYLAND 20814-3096 • 301/530-6500

March 25, 1986

The Honorable Lowell P. Weicker, Jr.
Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the 175 community-based Goodwill Industries, I congratulate you on the introduction of S. 2147, legislation which would permit nonprofit rehabilitation facilities to compete for federal procurement contracts under the small business set-aside program. Thank you for being so responsive to our concerns on this issue.

As introduced, the bill represents an excellent compromise that protects the legitimate interests of all parties involved. The federal government benefits from greater competition in the procurement process that results in the purchase of products and services at the lowest possible price; nonprofit rehabilitation facilities benefit from increased opportunities to create jobs for individuals with disabilities. Finally, the concerns of the for-profit small business sector are adequately addressed through the limitations and restrictions placed on nonprofit participation in the set-aside program.

We have discussed with your staff the possibility of additional language to clarify the appeals process set forth in the bill, and we have provided Ed Tiryakian, who has been most cooperative in our discussions on this measure, with language to help ensure an impartial appeals process that protects the interests of both the for-profit and nonprofit small business sectors.

Again, Goodwill Industries appreciates your efforts on this important legislative initiative and we are prepared to provide you and your staff with whatever assistance is required to secure Congressional enactment of this measure.

Sincerely,

David H. Cooney
Rear Admiral, USN (Ret.)
President & Chief Executive Officer

00:1596

NATIONAL INDUSTRIES FOR THE BLIND
524 Hamburg Turnpike, Wayne, New Jersey 07470
Telephone (201) 595-9200

GEORGE J. MERTZ
President

April 9, 1986

The Honorable Lowell P. Weicker, Jr.
Chairman, Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Weicker:

On behalf of National Industries for the Blind (NIB), I am pleased to present written testimony to be included in the hearing record for S.2147.

National Industries for the Blind applauds your continued interest on behalf of blind and disabled Americans. As the central nonprofit agency designated through the Javits-Wagner-O'Day Act, NIB shares your concern in providing employment opportunities to blind, multihandicapped blind, and other severely handicapped persons.

Please feel free to contact NIB if you, the Committee members, or staff have any questions concerning the enclosed testimony.

Sincerely,

George J. Mertz

George J. Mertz

GJM:fkw

Enclosure

STATEMENT FOR THE RECORD

National Industries for the Blind (NIB) is pleased to submit comments for the record regarding S.2147, a bill to provide that public and private not-for-profit workshops be eligible to participate in the small business set-aside program. NIB appreciates the advocacy of Senators Lowell Weicker and John Kerry in support of disability issues and expanding employment opportunities for blind and severely disabled Americans. NIB traditionally has not supported workshop participation in the small business set-aside program for a variety of reasons. We maintain this position due to the limited participation of our associated agencies in the set-aside program and the potential for negative impact on the Javits-Wagner-O'Day (JWOD) Act program.

NIB is a private nonprofit organization which has been designated since 1938 as the central nonprofit agency (CNA) for qualified workshops for the blind which are eligible to participate in the program of the Javits-Wagner-O'Day Act (P.L. 92-28). As such, NIB has been directly involved in assisting workshops with their employment and service programs, as well as management functions, for 48 years. The NIB Certificate of Incorporation states that NIB exists to assist blind persons in general and blind workers in particular.

NIB is, in some respects, an outgrowth of the workshops for the blind. In 1938, the workshops and other interested parties recognizing the need for a specialized organization which could provide technical assistance and related services, and also function as the designated central non-profit agency under the JWOD program, jointly formed NIB.

As the central nonprofit agency, one of NIB's primary functions is to equitably allocate purchase orders for Federal government items among qualified workshops for the blind and to assure that the products meet quality and delivery requirements. NIB is further responsible for ensuring that workshops meet the stringent qualifications for initial and continuing eligibility, including compliance with applicable Department of Labor rules and regulations. Technical assistance is provided to workshops in a broad range of management, manufacturing, and rehabilitation areas. Orientation and training programs are provided for blind workers, workshop staff and management, and agency board members. Financial assistance is also available to the workshops under specified circumstances.

THE STATE OF CONNECTICUT BOARD OF EDUCATION AND SERVICES FOR THE BLIND

Currently, there are 83 agencies which operate 103 workshop programs, associated with NIB. These agencies are located in 36 states, the District of Columbia, and Puerto Rico. The State of Connecticut Board of Education and Services for the Blind is one such agency associated with NIB. This agency operates a state workshop, BESB Industries and a work activities center. BESB Industries was chosen as the "typical

sheltered workshop" in the testimony presented by the National Federation of the Blind (the Federation) during the March 26, 1986, Senate Small Business hearing focusing on workshop participation in the small business set-aside program.

National Industries for the Blind would like to clarify various statements made during the Federation's testimony and provide more factual and current data reflecting the status of the Connecticut agency. In FY'85 the workshop employed 90 blind direct labor workers and 10 sighted direct labor workers. Of the 10 sighted direct labor workers, 3 were sighted with a handicap. In addition, there were 18 blind persons, including the Executive Director, in higher level positions within the agency.

NIB questions the designation of BESB Industries as a "typical workshop" as illustrated by the Federation. Workshops differ on a variety of dimensions: state vs private, large vs small, highly industrial vs less industrialized, many are associated with larger multi-purpose parent agencies, etc. <u>BESB Industries is not a typical workshop</u> in the sense that it is a state-operated workshop. Of the 83 NIB associated agencies, only 17 are state operated.

Regarding the workforce at the Connecticut workshop, in FY'85 there were 90 blind direct labor workers. Of this number, 44 individuals were multihandicapped blind, including 21 persons who were severely disabled blind and participated in the

agency's work activities center. The remaining 46 blind direct labor workers were without secondary handicaps.

In our effort to emphasize and encourage upward mobility of blind workers within our associated agencies, NIB conducted a survey to determine workshop success in this area. A recent NIB survey reveals that 18 blind individuals, including the Executive Director, are currently in higher level positions in the Connecticut agency.

The NIB associated workshops and their parent agencies have historically employed legally blind persons at all levels. There are blind persons employed in executive, management, professional, technical, supervisory, and support positions, a significant percentage of whom have worked in direct labor at some point in their lives and have received opportunities for advancement.

The NIB Board of Directors has stressed the promotion of blind workers through the passage of a Board resolution on upward mobility and by encouraging each associated workshop to designate a staff person who would identify and assist blind workers in their upward mobility and competitive placement efforts. The purpose of the JWOD program is to provide work opportunities for blind and severely disabled persons who are principally in direct labor jobs. The capable and more qualified blind person is able to seek employment in a competitive setting and generally does so.

Further, it is important to note that Section 503 of the Rehabilitation Act requires Federal contractors with contracts in excess of $2,500 to take affirmative action measures to employ and promote qualified disabled workers. As such, workshops are legally obliged to comply with the standard affirmative action procedures covering disabled persons in all government contracts over $2,500.

SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT

Much of the Federation's testimony focuses on wages paid to blind and sighted workers within the Connecticut shop. When one considers the wages paid to blind and other severely handicapped persons within all sheltered workshops, it is essential to consider that the majority of persons served in all workshops are mentally, emotionally, or developmentally disabled with a high degree of severity and multiple involvement. For example, it is the policy of the Connecticut workshop that, with the exception of the highest level employment program, individuals must have a documented disability in addition to blindness in order to receive an employment service. The behavioral patterns associated with these disabilities often result in lowered productivity. This does not mean that blind workers are summarily paid low wages. Section 14(c) of the Fair Labor Standards Act (FLSA) provides for the payment of wages less than the Federally mandated

minimum wage to individuals only when productivity is impaired or limited because of the individual's handicap. The Department of Labor (DOL), along with NIB and the Committee for Purchase from the Blind and Other Severely Handicapped, closely monitors the wages paid in workshops to ensure that they are commensurate with wages paid by regular industry in the vicinity for the same or similar work. DOL Wage and Hour regulations require that a handicapped person be paid the applicable certificate rate or at a rate based on his or her level of productivity, whichever results in the higher wage. Thus, the individual blind worker is guaranteed a degree of wage protection.

Regular program exemption certificates from the DOL do not allow for wages less than 50 percent of the Federal minimum wage. Individual rates between 25 and 50 percent of the Federal minimum wage can only be approved by the DOL with the written consent of the state Vocational Rehabilitation Agency to justify the lowered wage. Additional exemptions can be obtained from DOL for evaluation, training, and work activities center programs. Evaluation and training certificates are time limited, while work activities center certificates are restricted for the most severely disabled individuals whose "productive capacity is inconsequential." Workshops must document all time studies, commensurate wages, individual production, wage payments, and disability. These records must be available for audit by the Department of Labor.

It is important to note that many agencies associated with NIB subsidize the wages of blind workers over and above what they have earned through their own productivity. Often a workshop's participation in the JWOD program is beneficial in improving the wages of blind workers. For example, in the Connecticut workshop, the overall average hourly wage was $1.96 for blind direct labor workers (including work activities center clients) in FY'85. However, for blind direct labor workers producing JWOD products, the average hourly wage was $4.07 per hour.

We do not believe that the intent of Congress in legislating Section 14(c) of the Fair Labor Standards Act was to systematically pay blind workers less than sighted workers. On the contrary, NIB feels that the Congressional goal was to ensure viable employment opportunities for certain blind, multihandicapped blind, and other severely disabled persons, rather than precluding employment due to low productivity or the inability of the employer to subsidize the earnings of low producers. Compliance with Section 14(c) of the FLSA does not diminish a workshop's responsibility to meet labor standards. Rather, the workshop must abide by the same labor regulations as those affecting the competitive sector, as well as meeting the requirements of Section 14(c).

Sheltered workshops associated with NIB, including the Connecticut workshop, operate in order to provide employment opportunities for those blind persons who traditionally have been excluded from the competitive labor market. Their

exclusion from the competitive sector has largely occurred because of the severity of their disability, limited education, or factors associated with aging. All of these contribute to the individual's reduced productivity. Clearly, there are blind persons who do not need or desire the type of employment provided in workshops. But, there are thousands of blind and multihandicapped blind workers who do desire, prefer, and obtain a sense of fulfillment from the work provided through workshops.

ADDITIONAL RESPONSES TO TESTIMONY

NIB feels that the suggestion by small business advocates to include a non-transferability clause in S.2147 should not be implemented. Such a provision would mean that a sheltered workshop could win a small business set-aside for an item only to lose future JWOD contracts. The implementation of such a non-transferability clause could be detrimental to the future growth of employment opportunities for blind and severely handicapped individuals under the JWOD program.

The section of the Federation's testimony comparing total JWOD sales to the wage pay out ratio for handicapped workers is particularly misleading. Pay out ratio is a computation used by the Department of Labor as only one of a number of factors in its evaluation of adequacy and fairness of wages for disabled direct labor workers when it examines a certificated

workshop. Furthermore, the formula requires the subtraction of cost of raw materials from gross sales before computing the ratio. It is common for workshops in the JWOD Act program to have raw materials accounting for 60% or more of gross sales. The quoted pay out ratio of 13.66% by the Federation is, therefore, without relevance.

During the Federation's oral statement before the Small Business Committee, it was mentioned that there have been a number of Congressional and private studies suggesting improvements for programs authorized under the Javits-Wagner-O'Day Act. The consensus of these reports was extremely positive about the program. National Industries for the Blind, as well as its associated workshops, has welcomed the suggested ideas for improvement and has diligently worked in recent years to have an even more efficient and effective program which more adequately addresses the employment needs of blind persons.

Again, National Industries for the Blind would like to thank Senator Weicker and the Senate Small Business Committee for this opportunity to state our position and to clarify some of the comments made in the testimony of the Federation during your recent hearing on S.2147.

THE GENERAL COUNCIL OF WORKSHOPS FOR THE BLIND
315 HUBERT STREET
RALEIGH, NORTH CAROLINA 27603
(919) 833-8611

April 9, 1986

The Honorable Lowell P. Weicker, Jr.
Chairman, Senate Committee on Small Business
428A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Weicker:

I am writing on behalf of the General Council of Workshops for the Blind (GCWB) to express our position on Senate Bill 2147. I am requesting that this letter be included as part of the hearing record on S.2147.

The General Council of Workshops for the Blind is a national organization representing 83 multiservice agencies which operate 103 workshop programs serving blind and multihandicapped blind persons. The majority of the member agencies of GCWB provide goods and services produced by blind workers to the Federal government as authorized by the Javits-Wagner-O'Day Act (P.L. 92-28). For nearly fifty years, the Javits-Wagner-O'Day (JWOD) Act has provided a valuable source of employment for thousands of blind and multihandicapped blind persons who largely have been denied access to the competitive employment sector.

Broadening the market of viable employment opportunities for blind and other severely handicapped persons is the central goal of the Javits-Wagner-O'Day Act. The purpose of the legislation was and is to provide steady, renumerative employment in, as well as through, workshops for the blind and workshops for the other severely handicapped.

Since the late 1970's when the concept of workshops bidding competitively on small business set-asides was initially being discussed, the General Council of Workshops for the Blind has not supported this legislation. Our position remains the same today. The extent to which workshop participation in the small business set-aside program would represent a realistic source of expanded employment opportunities for blind, multihandicapped blind, and severely handicapped individuals is questionable. During the two previous authorization periods, FY'78 and FY'81 through FY'83, the GCWB workshop community has tended not to utilize the small business set-aside program. Our workshops represent a significant number of all workshops for the blind in this country. Thus, the small business

set-aside has not provided a substantive means of expanding employment opportunities for blind workers in sheltered workshops. The GCWB strongly feels that the JWOD Act is one of the primary legislative initiatives to open avenues of employment for blind and severely handicapped Americans, and notably for multihandicapped blind persons. Further, we feel that the small business set-aside bill, as currently proposed, would do little to supplement the efforts being achieved under the JWOD Act and may, in effect, weaken the JWOD program, thus reducing employment opportunities.

Small business representatives who testified at your recent hearing on S.2147 made some suggestions which, if included in the bill, would threaten the priority system presently established under the JWOD Act. The JWOD Act provides a priority in the procurement of commodities and services for the Federal government from qualified sheltered workshops for the blind and other severely handicapped over competitive industry. Currently, the JWOD program takes precedence over the Small Business programs. The Small Business Administration (SBA) and the Committee for Purchase from the Blind and Other Severely Handicapped have established that any small business set-asides are eligible for addition to the Procurement List if found to be suitable. This means that workshops for the blind and workshops for the other severely handicapped are permitted to add any suitable items (including small business set-asides) to the Procurement List under the JWOD program, provided that there will not be a serious adverse impact on the current or most recent contractor.

Some of your small business witnesses, however, suggested that S.2147 be amended to include a non-transferability clause which would serve to prohibit certain small business set-asides (including those awarded competitively to sheltered workshops) from being transferred to the JWOD program. If a non-transferability clause were to be enacted, it would challenge the existing priority for JWOD over small business set-asides. For example, a small business set-aside awarded to a sheltered workshop could not subsequently be placed on the procurement list under JWOD. This would mean, in practice, that the workshops for the blind or the workshops for the severely handicapped could win a single small business set-aside contract, only to lose future JWOD contracts for the item. This would, in essence, give certain small business set-asides a precedence over procurement under the JWOD Act, and reduce future employment oppportunities for blind and handicapped persons. Clearly, Congress has intended, and SBA and the Committee for Purchase from the Blind and Other Severely Handicapped have concurred, that the programs authorized by the

Javits-Wagner-O'Day Act have precedence over set-asides authorized by the Small Business Act. The General Council of Workshops for the Blind would strongly urge the members of the Senate Small Business Committee not to include an amendment which would disallow the transference of small business set-asides to the Procurement List under the JWOD program.

The General Council of Workshops for the Blind hopes that you will consider our remarks about S.2147 in your future deliberations of the bill. We feel strongly that the JWOD Act is an appropriate and primary mechanism to address the employment needs for certain blind and multihandicapped blind persons and that the small business set-aside program should not be allowed in any way to impact on the success that the JWOD Act has enjoyed during the past half century.

Sincerely

James W. Wells

James W. Wells
President

JWW/yn

STATEMENT OF JOSEPH C. LUMAN, COUNSEL TO THE NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED (NISH) ON TESTIMONY PRESENTED IN OPPOSITION TO S. 2147

The argument against the bill offered by the law firm of Trilling & Kennedy, through the trade associations they have created, rests on two distortions. The first is the implication that there is no net gain in employment potential for blind or other severely handicapped citizens when a sheltered workshop is awarded a contract.

The second is the suggestion that workshops employing blind and other severely handicapped individuals have an enormous competitive advantage over commercial businesses employing able-bodied workers.

MYTH #1--THE COMMERCIAL SECTOR
ALREADY PROVIDES JOBS FOR THE SEVERELY HANDICAPPED

The law firm's testimony and that of its clients (most of which they obviously prepared) argues that there is no net gain to the severely handicapped because (a) small businesses must hire the handicapped and (b) many small businesses subcontract with institutions that provide opportunities for the handicapped. Although the testimony was voluminous, no figures were presented to support these self-serving assertions. Further, from the three businesses that came before the Committee--presumably some of the better examples that could be found after over a year's solicitation for members to join the firm's lobbying association--little persuasive evidence was presented.

Two of the statements make no reference at all to hiring the handicapped, despite extensive length in one instance. The third, Jebco's, states that out of 195 employees it employs "some physically handicapped." This statement hardly backs up the repeated claims that commercial businesses provide employment opportunities for the severely handicapped equivalent to that of specialized sheltered workshops. Although Jebco must be commended for hiring any handicapped at all, it is not hiring severely

handicapped (who by definition could not work in a company like Jebco without some kind of specialized assistance) and it is not, apparently, hiring very many handicapped people. To contend that this amounts to providing equivalent employment opportunity to the severely handicapped is an outrageous distortion.

Similarly, only one of the three firms made any reference to subcontracting any work to institutions employing the blind or other severely handicapped. HLI Lordship Industries repeatedly contended that it provided work for handicapped at Kings Park Psychiatric Center. During the lawsuit, Lordship refused to answer interrogatories on how much it helped the handicapped and our information is that only a tiny fraction of Lordship's sales dollars find their way to Kings Park. However laudable it may be for a commercial company to share even the thinnest sliver of its largess with a psychiatric center, it is in no way equivalent to the provision of opportunity from contract work performed at a sheltered workshop.

MYTH #2--THE ALL-POWERFUL SHELTERED WORKSHOP

The second distortion is that sheltered workshops have an overpoweringly unfair advantage over commercial businesses. Both the Trilling & Kennedy and the clients' statements reiterate the "tax exempt, paying substandard wages" characterization. Glossing over evidence showing the expense of training, special fixtures and equipment, supportive services, and other needs of the blind and severely handicapped, the testimony could only resort to an assertion that most workshops operate with comfortable operating margins. This simply does not address the facts.

The facts are that the workshops employing the severely handicapped are quite limited in the range of tasks that they are able to perform or the products that they are able to produce. This was noted in the defendent's brief to the Federal District Court and never contested. Sheltered workshops are far from being an unstoppable economic juggernaut.

Again, looking at the three carefully culled witnesses presented after over a year's recruiting efforts, the claim of "severe" economic damage is unpersuasive. One company has had nothing happen to it as a result of the Javits-Wagner-O'Day Act, but is conerned that it might.

A second firm stated that over 50% of the "damage" allegedly inflicted on it was from the Federal Prison Industries, and only 10% from the sheltered workshops (and

the statement still praised the superior administration of the Federal Prison Industries in terms of recognizing the impact on commercial suppiers).

The third case, that of Lordship Industries, was one where the damage was 7% in the year in which the set-aside was made (an unanticipated demand for World War II medals has made the contract more lucrative than originally supposed), and in that year Lordship garnered 67% of all Defense Department awards in this catagory. Elwyn got into the business because of the desire of the Defense Department to create competition for Lordship, yet Lordship accuses Elwyn of wanting to "dominate the industry."

The "worst" of these cases, Lordship Industries, was examined very carefully in a lengthy Federal District court proceeding, which found that Lordship had not suffered severely. There was an economic impact on Lordship--there always is an impact when a sheltered workshop becomes a supplier, a fact that Congress clearly foresaw--but it was not severe enough to deny the sheltered workshop the opportunity to become the supplier.

CONCLUSION

This analysis shows that much of what is being portrayed to the Committee as fact is nothing but

self-serving speculation. No evidence was offered to back up the absurd innuendo that without sheltered workshops, the severely handicapped would have as much employment opportunity as with them. The examples offered of economic damage were doubtless unpleasant to those who were involved. They were not, however, examples of the devastating impact that these witnesses contended would be caused by sheltered workshops.

Sheltered workshops face enormous difficulties in remaining productive while providing opportunity to severely handicapped people. To callously suggest that they are essentially the same as private commercial businesses is a gross distortion of reality and overlooks the vast array of services that sheltered workshops must provide to their workers.

In a time of diminishing federal budgets, the Javits-Wagner-O'Day program and the small business set-aside opportunity give workshops for the blind and other severely handicapped the opportunity to improve the lot of their work force without requiring additional government subsidies. The handicapped community is fully aware that with the effects of Gramm-Rudman close upon us, it will be more and more difficult to obtain the increased funding necessary to serve the handicapped. The small business eligibility program cost the government almost nothing in terms of the benefits that

it brings the severely handicapped. It is being opposed by people who quite clearly do not have the interests of the handicapped in mind--especially when one considers the inference that as much good would be done for the handicapped without the Javits-Wagner-O'Day contracts as with them.

Clearly, this alleged National Council cannot in any way claim to speak for more than a tiny fraction of the small businesses in the nation. It would be a travesty to accord their bald assertions the same degree of consideration as the track record painstakingly compiled by sheltered workshops and the handicapped citizens they serve.

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